Master Services Agreement

1. **Definitions.** Unless otherwise specified, capitalized terms in this Agreement will have the meanings attributed to them in Section 1 or in the Order Document in which they appear.

   (a) **"Agreement"** means this Master Services Agreement, all Order Documents, and any amendments or exhibits to the foregoing.

   (b) **"Confidential Information"** means all information not publicly known, used in or otherwise relating to a party's business, customers or financial or other affairs, including (i) existing and future customer names and lists; (ii) future products, business development or planning, commercial relationships and negotiations; (iii) information relating to the Services; (iv) information received from third parties that a party is obligated to treat as confidential; (v) all information which is marked as confidential or proprietary, whether such information is disclosed orally, in writing or otherwise before or after the Effective Date; and (vi) this Agreement.

   (c) **"Hardware"** means hardware, if any, provided to Customer under any Order Document issued hereunder in connection with the Services.

   (d) **"Order Document"** means either a service brief ("Service Brief"), a statement of work ("SOW") or such other similar document, as applicable, that has been issued pursuant to this Agreement and that is mutually accepted by the Parties.

   (e) **"Services"** means the Arraya services to be provided to Customer under any Order Document issued pursuant to this Agreement.

   (f) **"Software"** means software owned or licensed by Arraya, which may be provided to Customer under any Order Document issued pursuant to this Agreement in connection with the Services, whether standalone, or as incorporated in Hardware, including any APIs, guides, or documentation provided therewith.

2. **Orders**

   (a) <u>Services</u>. All Services to be provided by Arraya hereunder will be purchased or licensed under an Order Document. An Order Document will contain a description of the Services being obtained, and/or additional terms and conditions specific to such Services. Customer agrees that each Order Document will be signed by a representative having the authority to bind Customer and that Arraya may presume that such representative has such authority. All accepted Order Documents are subject to the terms and conditions of this Agreement. Any Services not expressly set forth on an Order Document are excluded; there are no implied Services. If Arraya and Customer want Arraya to perform services beyond those listed on the Order Document, the Parties may enter into additional Order Documents.

(b) <u>Project Change Request.</u> An Order Document may only be amended by a written and mutually executed Project Change Request. Such Project Change Request shall reference the Order Document, identify which Services are being changed and how they are being changed, and identify any changes in fees or payment terms.

(c) <u>Cancellation.</u> Unless otherwise specified in an Order Document, a Customer may not cancel an Order Document, in whole or in part, without Arraya's prior written permission. For any Order Document so cancelled, Customer will be responsible for: (i) any and all regular fees specified in the Order Document due up until the time of cancellation; (ii) any expenses incurred by Arraya arising from such cancellation (including but not limited to any amounts charged to Arraya from its vendors, subcontractors, or distributors). Customer may only return purchased Products in conjunction with a written Return Materials Authorization.

(d) <u>Additional or Conflicting Terms.</u> Arraya's acceptance of any purchase order or similar document submitted by Customer is made in reliance on Customer's acceptance of the terms of this Master Services Agreement. Any additional or conflicting terms included on any Customer purchase order or similar document will not operate as an amendment to or alteration of this agreement, under any circumstances, including if Arraya is required to sign the document or if Arraya fails to object to such terms. Without limiting the generality of the above portion of this Section 2(d), in the event of any conflicting or contradictory terms between this Agreement and an Order Document, this Agreement will control unless the Order Document specifically states otherwise.

3.   **Fees and Payment**

(a) <u>General</u>. As compensation for the Services, Customer agrees to pay Arraya at the rates or fees provided for on the applicable Order Document, or, if not listed in the Order Document, within thirty (30) days of the date of Arraya's invoice. Customer also agrees to pay all of reasonable travel, communications, administrative, and other out-of-pocket expenses incurred by Arraya during its performance of the Services, and all applicable taxes. Customer will be invoiced for hardware purchases when purchases ship from the manufacturer or distributor; they will be invoiced for Services upon completion of the applicable milestone identified in an Order Document or upon completion of the Services.

(b) <u>Disputes</u>. Any disputes to invoices must be initiated, in good faith, within twenty one (21) days of the applicable invoice date; otherwise the right to dispute such invoice shall be deemed waived.

(c) <u>Late Payments</u>. If any payment is not made when due, Customer shall pay interest on all late payments at a rate equal to 15% per year, or the maximum rate permitted by applicable law, whichever is less, until the payment is made. Arraya may accept any check or payment without prejudice to its right to recover a balance due or to pursue any other right or remedy, and no endorsement or statement on any check or payment or letter accompanying any check shall be deemed an accord and satisfaction. All payments by Customer will be made in full without deduction or set-off.

(d) <u>Purchase of Hardware, Software and Peripherals</u>. Any purchases of hardware, software and/or peripherals will be made and paid for directly by Customer, unless otherwise agreed to, in writing, by Arraya and Customer.

4.   Personnel

(a) <u>Assignment</u>. Arraya has the sole right to select personnel to perform the Services. Arraya will attempt to honor requests for a specific employee or associates.

(b) <u>Non-Solicit</u>. Each party covenants and agrees that during the term of this Agreement, and for a period of twelve (12) months following the termination of this Agreement, the parties will not, directly or indirectly, except on behalf of the other party: (i) solicit for employment any person or entity who is an employee, agent, officer or director of the other party, or (ii) induce or attempt to influence any employee, independent contractor or supplier of the other party to terminate employment or any other relationship with the other party.

5.   Warranties

(a) <u>Performance</u>. Arraya warrants that it will perform the Services in a professional and workmanlike manner in accordance with applicable commercial standards. Arraya further warrants that the Services shall not infringe the intellectual property rights of Customer or any third party in its performance of Services. **This warranty is exclusive and is in lieu of all other warranties and any oral or written representations, proposals, or statements made on or prior to the effective date of this Agreement.**

(b) <u>Third-Party Warranties.</u> Customer acknowledges that Arraya is a distributor of hardware and software, and does not manufacture or develop hardware. Arraya will endeavor to pass through warranties from the manufacturer or licensor of such hardware or software and to the extent that Arraya does so, Customer will look solely and exclusively to the Manufacturer with respect to claims relating such hardware or software except to the extent attributable to Arraya's performance of Services. **Specifically, Arraya makes no warranty, express or implied, with regard to third-party hardware or software and expressly disclaims the warranties or conditions of merchantability and fitness for a particular purpose. Customer acknowledges that no representations, warranties, promises or statements have been made by Arraya with respect to the hardware or software or any portion thereof.**

(c) <u>Exclusions.</u> Arraya will have no liability of any kind for an alleged breach of the warranties in Section 5(a) or 5(b) if (i) any software or hardware provided by Arraya has been modified by Customer or any third party, unless authorized by Arraya in writing; (ii) any hardware or other computer equipment, devices, or other products on which Arraya installed any Software has been serviced or changed by any party other than Arraya, unless otherwise authorized by Arraya or expressly permitted by Arraya's documentation; (iii) any computer equipment, device, or peripheral supplied by Customer does not have sufficient capacity, is not in good operating order or is not installed, handled, or used in a suitable operating environment or manner; (iv) to the extent that the issue raised in the claim was caused by Customer or its agents or other third party; (v) Customer fails to reasonably provide timely notice to Arraya

of the alleged issue after discovery thereof; (vi) the issue is not reproducible; (vii) Customer fails to comply with Arraya's or the Manufacturer's instructions regarding remediation of the issue, and/or RMA procedures; (viii) damage from accidents, abuse, misuse, or negligence, or other factors beyond Arraya's control, such as fire or flood, any breakdowns, fluctuations, or interruptions in electrical power, air conditioning, the telecommunications network; or (ix) Customer's violation of this Agreement.

(d) <u>Security Services Disclaimer.</u> Arraya does not guarantee that the Services provided under this Master Agreement will prevent all cyber-attacks or meet all of the Customer's security needs; or that the Customer's network will be free of errors, viruses, malware, ransomware; or that service or transmission in Customer's systems will be uninterrupted while the Services are being delivered. Arraya is not responsible for any loss or damage to Customer's operations that may occur under these Services, except as expressly provided in the Master Agreement.

(e) <u>Remedy.</u> Notwithstanding any provision of this Agreement to the contrary, if any deliverable identified in any Order Document does not conform to the specifications or contains errors or defects, Customer's sole and exclusive remedy shall be correction of the problem by Arraya. If Arraya is unable to correct the deficiencies, Customer is entitled to recover the fees paid to Arraya for the deficient portion of the Services.

(f) <u>Warranty Claims.</u> All claims by Customer having anything to do with the Services or otherwise relating to Arraya's performance of the Services must be made in writing within thirty (30) days after the date on which the Services were completed. The failure of Customer to give such notice shall constitute, by Arraya, a complete defense against such claims.

(g) <u>Warranty Disclaimer.</u> **Except as expressly set forth herein Arraya disclaims any and all warranties, express or implied, including, without limitation, warranties of merchantability, non-infringement, and fitness for a particular purpose. Arraya does not warrant that the performance of the services or operation of the products will be uninterrupted, error-free, or secure.**

(h) <u>Indemnity</u>. Customer shall defend, indemnify, and hold harmless Arraya from and against any and all claims and expenses, including reasonable attorney's fees, arising out of or related in any way to the Services, any goods acquired in connection with the Services, the interaction of an item installed by Arraya with existing hardware/software or business process, or the breach of this Agreement by Customer.

(i) <u>Limitation on Liability.</u> **The maximum liability of Arraya arising from or relating to this Agreement shall not exceed the total amount paid or payable by Customer to Arraya under this Agreement for the preceding twelve (12) months. Neither Arraya nor its shareholders shall be liable to Customer for any punitive, exemplary, consequential, incidental, indirect, or special damages (including lost profits or goodwill) arising from or relating to this Agreement, whether under a theory of breach of contract, negligence, strict liability or otherwise, and regardless of whether Arraya has been advised or is aware of the possibility of such damages. The limitations set forth in the preceding sentence shall survive failure of an exclusive or limited remedy. These exclusions and**

limitations will apply to the fullest extent permitted under applicable law; they will not apply to a breach of Section 4(b) (Non-Solicit) or Section 7 (Confidential Information). Customer acknowledges that the pricing laid out by Arraya represents an allocation of this risk set forth in this Agreement and that without these limitations in this Section 5, such prices would be substantially different.

6.   **Term and Termination**

(a) This Agreement shall take effect on the Effective Date and shall continue in effect until this Agreement is terminated as set forth below.

(b) Termination for Cause. (i) If either Arraya or Customer breaches this Agreement, the other may terminate this Agreement if the breaching party does not fully cure the breach within thirty (30) days after receipt of written notice that specifies the nature of the breach. (ii) If Arraya terminates this Agreement for Cause under this Section 6 Arraya may, at its sole discretion, cease providing any Services under any Order Document. (iii) If Customer is the subject of an assignment for the benefit of its creditors or voluntary or involuntary proceedings under any bankruptcy or insolvency laws, Arraya may terminate this Agreement by written notice to Customer.

(c) Termination for Convenience. Either Arraya or Customer may terminate this Agreement with thirty (30) days written notice to the other. If there are Services ongoing at the time of Termination, this Agreement shall remain in effect until the completion of those Services as outlined in the applicable Order Document.

(d) Effect of Termination. Within thirty (30) days of the termination of this agreement, each Party shall return to the other any data, materials, or other information including Confidential Information held by it. The fees that are outstanding and due to Arraya shall still be due under their ordinary or agreed-to terms, regardless of the termination of this Agreement or any Order Document. Termination of any Order Document will not affect this Agreement.

7.   **Confidential Information**

(a) Each party agrees: (i) to keep confidential all the other party's information which has been identified as Confidential Information in the same manner in which it protects its own Confidential Information; (ii) not to disclose any of the other party's Confidential Information to any third party without the prior written consent of such other party (other than to employees and contractors involved in the provision of the Services and to its attorneys) and who have a need to know the same and are bound to keep it confidential; and (iii) to use the other party's Confidential Information only in connection with the performance of this Agreement.

(b) Each Party acknowledges that the unauthorized disclosure of its Confidential Information could cause immediate and irreparable harm for which money damages would not be adequate compensation. Therefore, and not withstanding any other provision of this Agreement, each Party agrees that in the event of an unauthorized disclosure of Confidential Information, the other Party may seek injunctive relief from any court with jurisdiction over the Parties and the matter.

(c) The provisions of Section 11(b) shall not apply to any Confidential Information which is: (i) lawfully obtained without any duty of confidentiality; (ii) already in the non-disclosing party's possession (other than as a result of a breach of this Section 11); (iii) in the public domain (other than as a result of a breach of this Section 11); or (iv) necessarily disclosed pursuant to a statutory obligation (but only to the extent so required to be disclosed).

(d) Each party, upon the request of the other, shall return all of the other party's Confidential Information in its possession to the other party or destroy such Confidential Information as directed by the other party and provide to such party a certificate of an officer of the party certifying such destruction.

(e) Each party acknowledges and agrees that: (i) the restrictions set forth in this Section 7 are reasonable in the circumstances and all defenses to the strict enforcement thereof by a disclosing party of Confidential Information are hereby waived; (ii) a violation of any of the provisions of this Section 11 shall result in immediate and irreparable harm and damage to the disclosing party; and (iii) in the event of any violation of any provision of this Section 11, the disclosing party, in addition to any other right to relief, shall be entitled to equitable relief by way of temporary or permanent injunction and to such other relief as any court of competent jurisdiction may deem just and proper.

(f) The restrictions contained in this Section 7 shall survive and continue to apply after the termination of this Agreement.

8.   **Miscellaneous**

(a) <u>Independent Contractor</u>. Arraya is an independent contractor. Nothing in this Agreement shall be deemed to create an employment, partnership, or joint venture relationship between Arraya and Customer.

(b) <u>Assignment</u>. Neither Arraya nor Customer shall have the right to assign or otherwise transfer its rights and obligations under this Agreement except with the prior written consent of the other.

(c) <u>Notices</u>. Notices to be given under this Agreement shall be sent by (a) personal delivery, (b) first class mail, postage prepaid, certified or registered with return receipt requested, or (c) overnight courier providing proof of delivery. Notice so given shall be effective upon receipt or refusal or inability to accept such notice. Notices shall be addressed at the respective address listed on the Signature Page to this Agreement.

(d) <u>Entire Agreement</u>. This Agreement and any Exhibits attached here, along with any Order Documents (which are hereby incorporated into this Agreement by reference), constitute the entire agreement of Arraya and Customer with respect to the subject matter of this Agreement, and supersedes all previous proposals, oral or written, and all negotiations, conversations or discussions previously had between Arraya and Customer relating to the subject matter of this Agreement.

(e) <u>Force Majeure</u>. Arraya shall not be liable for any breach of this Agreement caused by matters beyond Arraya's reasonable control, including, without limitation, Acts of God, fire, lightning, explosion, war, disorder, flood, industrial disputes (whether or not involving Arraya's employees), weather of exceptional severity, or acts of local or central governmental or other authorities or regulatory bodies.

(f) <u>Waiver</u>. No failure by either Arraya or Customer to take any action or assert any right under this Agreement shall be deemed to be a waiver of such right.

(g) <u>Amendments</u>. This Agreement may be amended only by a written instrument executed by Arraya and Customer.

(h) <u>Severability</u>. If any portion of this Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be interpreted in accordance with applicable law as nearly as possible to reflect the original intentions of Arraya and Customer, and the remainder of this Agreement shall remain in full force and effect.

(i) <u>Governing Law</u>. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania without regard to principles of conflicts of laws. Customer agrees that if Customer brings any action against Arraya related to this Agreement, Customer shall bring such action in the courts of the Commonwealth of Pennsylvania sitting in Montgomery County, or the United States District Court for the Eastern District of Pennsylvania.

Exhibit A – Terms Applying Only to Professional Services

The terms contained in this Exhibit A, together with the terms contained in the General Terms and Conditions to which this Exhibit A is attached, will govern the provision of installation, configuration, implementation, consulting, and other professional services ("Professional Services") by Arraya to Customer. In the event of a conflict between this Exhibit A and the General Terms and Conditions with regard to Professional Services, the terms in this Exhibit A shall govern.

1. **Overview**

Arraya will provide the resources and personnel it deems necessary to provide the Services. The manner of the performance of the Services is at Arraya's sole discretion and control.

2. **Customer Responsibilities**

Customer will provide access to facilities, Customer's staff, and network and computer systems as required for Arraya to complete the Services.

For Services that need to occur at Customer's work locations, Customer will make reasonable accommodations for Arraya at such work locations. These accommodations may include but are not limited to a desk/cubicle, voice telephone, internet access, and shared access to printer, copier, fax, and conference room facilities.

Customer will provide and make available to Arraya all network connectivity and other cabling, electrical outlets, racks, and other equipment that are necessary or appropriate for Arraya's performance of the Services.

Customer will provide timely decisions, approvals, cooperation, materials, and resources required for Arraya's performance of the Services. Customer agrees and acknowledges that such cooperation is essential for the successful performance of the Services as outlined in the applicable Order Document, and that without such cooperation Arraya may not be able to perform the Services as outlined in the applicable Order Document, either within any timeframes or at any prices outlined.

3. **Reliance on Customer Materials**

Customer acknowledges that Arraya's performance of the Services or development of pricing or contracts for the Services may be dependent upon materials, data, schematics, or other information provided by the Customer, and that Arraya is entitled to rely on the accuracy of such information in the performance of the Services. While performing the Services, Arraya may be making advice or recommendations and Customer acknowledges that they, Customer, are responsible for making decisions and bear responsibility for the consequences of following any such advice and recommendations. Arraya will not be liable for any result obtained or not obtained through implementation of the advice and recommendations. Customer shall defend, indemnify and hold harmless Arraya from and against any and all damages, costs (including reasonable attorney's fees), and any other liabilities arising from Arraya's reliance on materials, data, schematics, or other information provided by Customer to Arraya.

4. Milestone Payments

If Arraya and Customer have agreed to payments based on milestones set forth in an Order Document ("Milestone Payments"), achievement of the milestones shall trigger such payments. Achievement of the milestones is determined by Arraya in its sole discretion. Arraya shall invoice the customer as outlined in the applicable Order Document.

5. Ownership and Licenses

Subject to the Customer's continued compliance with this Agreement and, as applicable, Exhibit C of this Agreement, Arraya grants Customer a world-wide, fully paid, non-transferable, non-exclusive license for the sole purpose of using the materials, devices, products or other deliverables that are provided by Arraya to Customer as a result of performing Professional Services ("Deliverables") for their internal business use and operations. Customer will have no rights to sublicense to third parties the rights to the Deliverables except as necessary to perform its internal business operations. Customer grants Arraya a world-wide, royalty-free, non-exclusive license to use materials and technology owned or controlled by Customer which Arraya reasonably requires to perform the Services solely conjunction with the performance of those Services, or the preparation of any Deliverables for Customer.

Exhibit B – Terms Applying Only to Hardware Purchases

The terms contained in this Exhibit B, together with the terms contained in the General Terms and Conditions to which this Exhibit A is attached, will govern the purchase and sale of Hardware by Arraya to Customer. In the event of a conflict between this Exhibit B and the General Terms and Conditions with regard to Hardware Purchases, the terms in this Exhibit A shall govern.

1. Quotes and Pricing

Any Hardware or pricing referred to in an Arraya quotation or other Order Document is subject to availability and does not constitute an offer by Arraya. Arraya reserves the right to change prices for Hardware at any time, effective immediately upon notice to Customer, for all orders of Hardware submitted following the effective date of such notice.

2. Shipping

Products are shipped F.O.B. point of origin. Title to Hardware (excluding any Software embedded on or provided with the Hardware) and risk of loss will pass upon delivery of Hardware to carrier. All shipments will be made to the address specified in the applicable Order Document. Arraya reserves the right to make delivery in installments, with all such installments to be separately invoiced and paid for individually, without regard to subsequent deliveries. Delay in delivery of any installment will not relieve Customer of its obligation to accept remaining deliveries. Returns of Hardware will not be permitted unless expressly authorized in writing by Arraya.

3. Delivery

Arraya will use commercially reasonable efforts to ship the Hardware to Customer's delivery point, pursuant to any applicable terms of the Order Document. Unless otherwise stated on an applicable Order Document, Customer acknowledges that Arraya will ship and it will accept delivery of such Hardware within twelve (12) months of providing Arraya with an executed Order Document for such Hardware. Customer agrees to assume and bear the entire risk of casualty or damage to the Hardware from any cause whatsoever from the date of delivery acceptance at Customer's premises. No casualty or damage, after such delivery, will relieve Customer from the obligation to make payments or to comply with any other obligations under this Agreement. Customer's acceptance of delivery of any Hardware hereunder will be deemed Customer's acknowledgement that (a) all of the Hardware listed in the applicable Order Document has been received, and (b) such Hardware shows no obvious signs of physical damage. Customer's acceptance of delivery does not constitute or imply Customer's acceptance of installation or that the Hardware is in working order.

4. Acceptance

Upon receipt of Hardware, Customer agrees to inspect and/or test the Hardware. The Hardware will be deemed accepted by Customer unless Customer provides Arraya, within ten (10) days of the delivery date, a written notice specifying all defects or discrepancies in the quality or quantity of Hardware.

Exhibit C – Terms Applying Only to Software

The terms contained in this Exhibit C, together with the terms contained in the General Terms and Conditions to which this Exhibit C is attached, will govern the purchase of Software from Arraya to Customer, whether licensed or work made for hire and whether developed by Arraya or a third-party. In the event of a conflict between this Exhibit C and the General Terms and Conditions with regard to Software, the terms in this Exhibit C shall govern.

1.   **Software That is Licensed**

(a) <u>License Grant.</u> Subject to the terms and conditions of this Agreement (including Customer's obligation to pay to Arraya any and all amounts when due), and subject to any third party license terms that are set forth below, or on the applicable Order Document, or on the applicable Software, if an applicable Order Document states that Arraya is licensing Software to Customer, Arraya grants to Customer a limited, nonexclusive, fully paid up, non-transferable, non-sublicensable license, in object code form only, to use the Software for Customer's business purposes, by such number of users and during such period of time as may be set forth on the applicable Order Document (a "License."). If Software is provided in conjunction with Hardware, in no event will the term of any license to the Software exceed the period during which Customer owns or leases the applicable Hardware (or any Customer-provided computers, if applicable). In addition, Customer may: (i) use only the number of copies of the Software as identified in the Order Document; (ii) use the related Software documentation only in connection with such use of the Software; and (iii) make only one (1) machine-readable copy of the Software, which copy may be used only for internal non-production purposes.

(b) <u>Title.</u> For software that is Licensed, title to and ownership of the Software, documentation and Arraya Confidential Information, as well as any and all adaptations, modifications or derivative works thereto and any and all Intellectual Property Rights therein or relating thereto, will at all times remain with and vest in Arraya and its licensors. Nothing in this License will be interpreted as conveying to Customer any rights in the Software or documentation other than those granted in Section 1(a) above.

(c) <u>Restrictions.</u> For Software that is Licensed, Customer agrees that it will not, and will not authorize or permit any third party to: (i) sell, lease, transfer, license or sublicense any or all of the Software, documentation and/or Arraya Confidential Information or otherwise use any Software for the benefit of any sublicensee or third party; (ii) decompile, disassemble, re-program, analyze, reverse-engineer or create or attempt to create any derivative work or any other software based upon the Software or documentation or any portion thereof; or (iii) provide, copy, transmit, disclose, divulge, or make available to, or permit use of the Software or documentation by any third party or entity or machine (other than as expressly provided for herein) without Arraya's prior written consent on a case by case basis, which may be granted or withheld in Arraya's sole discretion.

(d) <u>Third-Party Software.</u> Arraya may on occasion re-sell or distribute software from a third party. Arraya will distribute the third party proprietary Software to Customer subject to the

applicable third party licensor's standard license terms (e.g., "shrink wrap" licenses) that will be provided to Customer by Arraya in printed or electronic form (by appearing on the applicable documentation or packaging materials, or on a computer screen when using the software or accessing a specified URL). In the event that Customer and the third party licensor have agreed to a software license agreement governing any software, the terms thereof will supersede the standard license terms.

2. Software That is Work Made for Hire

(a) <u>Provision of Services and Personnel.</u> Arraya will define the scope and deliverables for any custom-developed software or software applications which are developed and sold to a Customer, as "Work Made for Hire" in an Order Document. Arraya will assign personnel to develop such software and applications, including third-party and or subcontracted personnel, at its sole discretion.

(b) <u>Support and Maintenance.</u> Maintenance and support rights or obligations for any third party products or equipment that are used in the Software and are available through the respective vendors or manufacturers of such content and equipment shall be assigned by Arraya to Customer. Arraya shall not use any intellectual property of any third party in the Software without Customer's written consent.

(c) <u>Commissioning.</u> The Software shall be put into regular operation after Customer acceptance test has been successfully completed and approved.

(d) <u>Intellectual Property Rights.</u> If and only if it is specified in an applicable Order Document that software is "Work Made for Hire," Arraya agrees that the development of the Software (but excluding "Arraya Tools") is "work made for hire" and that the Software shall be the sole property of Customer. Customer shall own all right, title and interest in and to the software. The rights, title and interest in and to the software shall be granted to the Customer only upon receipt of full payment by Arraya. "Arraya Tools" are pre-existing Intellectual Property of Arraya: including but not limited to the materials, information, trade secrets, generic programming codes and segments, algorithms, methodologies, processes, tools, data, documents, notes, programming techniques, reusable objects, routines, formulae and templates that: (i) are developed prior to the Software and utilized by Arraya in connection with the Software; (ii) are designed to perform generalized functions not specific to the particular requirements of Customer or the Software; (iii) do not contain any of Customer's Confidential Information or other information or items provided by Customer; and (iv) cannot reasonably be expected to provide Customer an advantage over its competitors. If the software incorporates any pre-existing Intellectual Property of Arraya that is necessary for its functioning as described in an applicable Order Document, Arraya grants to Customer a perpetual, non-exclusive, worldwide, transferable, royalty-free license to use such Arraya Pre-Existing IP solely along with the software.

(e) <u>Assignment.</u> To the extent any Work performed by Arraya does not qualify as a "work made for hire" under applicable law, but is specified as such an in applicable Order Document, Arraya hereby irrevocably and unconditionally assigns to Customer, without further

compensation, all of its right, title and interest in and to the Software and any and all related patents, copyrights, trademarks, and trade names in the United States and elsewhere. This assignment is conditioned upon full payment of the compensation due to Arraya under an applicable Order Document. To the extent any of Arraya's rights in the Software, including without limitation any moral rights, are not capable of assignment under applicable law, Arraya hereby irrevocably and unconditionally waives all enforcement of such rights to the maximum extent permitted under applicable law. Arraya will assist Customer in obtaining and enforcing patent, copyright and other forms of legal protection for the Software. Upon request, Arraya will sign all applications, assignments, instruments and papers and perform all acts necessary or desired by Customer to assign the Software fully and completely to Customer and to enable Customer, its successors, assigns and nominees, to secure and enjoy the full and exclusive benefits and advantages of the Software at no charge to Customer; however, Customer shall reimburse Arraya for reasonable out-of-pocket expenses.

3. **Acceptance Testing**

Customer shall make available such personnel as necessary for testing the Software, whether Work Made for Hire or Licensed, and training users of the Software and prepare complete acceptance test data for testing the Software, as outlined in the applicable Order Document.

(a) Acceptance of Software - Acceptance Test Plan. If agreed to in an Order Document, Customer shall, in cooperation with Arraya, prepare and be responsible for a plan for the Customer Acceptance Test ("Acceptance Test Plan"), with acceptance test procedures suitable for verifying that the Software meets the agreed requirements of the Order Document. The Acceptance Test Plan shall describe how the Customer acceptance test will be carried out, and shall contain a detailed description of the tests to be performed, as well as the acceptance criteria.

(b) Acceptance Period. Customer will have the specified number of days following the date of delivery of the Software, as set forth in the Order Document, to inspect, test, and assess the Software and determine whether it satisfies the acceptance criteria in accordance with the procedures set forth in the Specification. Customer acceptance test shall be performed in accordance with the Acceptance Test Plan.

(c) Approval. If Customer approves the acceptance test, then Customer shall give Arraya written notice to such effect without undue delay. The acceptance test is deemed to be approved unless Customer has notified Arraya in writing, within ten (10) days after the test was to be completed according to the Acceptance Test Plan, stating that it is not approved. The acceptance test is also deemed to have been approved if Customer elects to put the Software into operation before the test has been approved by Customer.

(d) Rejection. If Customer refuses to approve the acceptance test, such rejection shall be explained in writing. If Arraya wishes to argue the rejection is unjustified, written notice shall be given, which notice shall be given within ten (10) days. If Arraya does not dispute the rejection, then Arraya shall have fifteen (15) days to send Customer a timetable for repairing the errors associated with the Software. Arraya shall give written notice to Customer when the repairs have been completed and Customer shall promptly resume its

acceptance test. The approval period may only commence when the acceptance test has been approved by Customer.

Exhibit D – Terms Applying Only to Managed Services

The terms contained in this Exhibit D, together with the terms contained in the General Terms and Conditions to which this Exhibit D is attached, will govern Managed Services provided by Arraya to Customer. In the event of a conflict between this Exhibit D and the General Terms and Conditions with regard to Managed Services, the terms in this Exhibit D shall govern.

1. **General**

Customer may purchase Managed Services from Arraya pursuant to a mutually executed Order Document. Each Order Document will contain a specific reference to this Agreement, the name(s) of the Managed Service(s) to be provided to Customer, any special obligations of Customer and/or Arraya, a services term, and a schedule of invoicing and rates. Customer hereby authorizes Arraya to provide the Managed Services, and agrees to cooperate with Arraya as directed by Arraya in Arraya's performance of such services.

2. **Term**

The Managed Services commence on the date listed in the Order Document and continues through the term (the "Term") indicated thereon. As applicable, the number of systems, licenses, installations, deployments, managed end points, or end users for which Customer has purchased the Managed Services, the rate or price, and the applicable Term for each Managed Service is indicated on the Order Document. Unless otherwise agreed in writing between Arraya and Customer, purchases of Managed Service must be solely for Customer's own internal use and not for resale.

3. **Rescheduling**

If the Managed Services includes an onboarding or project initiation or start-up services, once those services have been scheduled, any changes to the schedule must occur at least five (5) business days prior to the scheduled date. If Customer reschedules this service within five (5) business days or less prior to the scheduled date, the Managed Services will be billed and payable in full.

4. **Payment for Hardware**

Unless otherwise agreed to in writing, payment for Hardware shall in no case be contingent upon performance or delivery of consulting or Managed Services purchased with such Hardware.

5. **Optional Services**

Optional services (including point-of–need support, installation, consulting, managed, professional, support or training services) may be available from Arraya in connection with Managed Services. Optional services may require a separate Order Document to be executed with Arraya. In the absence of such a Document, optional services may be provided pursuant to this Exhibit D or in accordance with Advanced Support as detailed in an Order Document, and will be

billed and payable according to Arraya's standard, then-current time and materials rates, unless a separate rate is specified in the applicable Order Document.

6. Assignment

Arraya may assign or subcontract the Managed Services to qualified third party service providers. Arraya will remain responsible for the performance of all Managed Services, regardless of whether performed by Arraya or a third party subcontractor.

7. Cancellation

Arraya may cancel the Managed Services at any time during the Term for any of the following reasons: (a) Customer fails to timely pay the total price for the Managed Services in accordance with the invoice terms; (b) Customer is abusive, threatening, or refuses to cooperate with the assisting analyst or on-site technician; or (c) Customer fails to abide by all of the terms and conditions set forth in this Exhibit D or the Agreement. If Arraya cancels this Service, Arraya will send Customer written notice of cancellation at the address indicated on Customer's invoice. The notice will include the reason for cancellation and the effective date of cancellation, which will be not less than ten (10) days from the date Arraya sends notice of cancellation to Customer, unless local law requires other cancellation provisions that may not by varied by agreement. If Arraya cancels the Managed Service pursuant to this paragraph, Customer shall not be entitled to any refund of fees paid or due to Arraya.

8. Geographic Limitations

The Managed Services are not available at all locations. Service options, including service levels, technical support hours, and on-site response times will vary by geography and certain options may not be available for purchase in Customer's location. Customer is encouraged to contact Customer's Arraya account executive representative for these details.

9. Service Level Agreement

Some Managed Services will be provided in accordance with service level agreements ("SLAs"). SLAs are for measurement and reporting purposes only. Any failure on the part of Arraya to satisfy any SLA will not entitle Customer to any credit or other remedy, unless otherwise expressly set forth in an Order Document.

10. Exclusions

For the avoidance of doubt, the following activities are not included in the scope of Managed Services: (a) Any services, tasks, or other activities other than those specifically included in the Order Document. (b) Development of any intellectual property created solely and specifically for Customer. (c) Cost of consumables, replacement parts, hardware, software, network upgrades, and associated services except as provided by Arraya to perform the Managed Services. (d) Except as otherwise stated in the Order Document, all server, network device, and software upgrades. (e) Manufacturer warranty parts and labor/services. (f) Customer printers (whether standalone or network-attached) unless otherwise specified in an Order Document. (g) Any non-support or administrative-oriented activities such as technical projects, including PC deployments, hardware

upgrades, and software installations or relocation of, or additions or changes to any of the foregoing items. (h) Mass installation of software – new or re-installation. (i) File restoration and data backup. (j) Problems occurring in applications or devices not listed in the SOW or Order Document. (k) Setup/configuration of new devices, PCs, or peripherals. (l) Custom application support. (m)   Issues arising due to a device past the manufacturer's "end of life" or being used for tasks for which the device was not designed or recommended. (n) Any additional exclusions set forth in the Order Document.

11.   Service Requirements and Limitations

The following service requirements and limitations apply: (a) Periodic reboots for such devices as firewalls, routers, and services are required to apply/activate critical update patches and configuration changes. Arraya's support services within this Exhibit are predicated upon Customer's support and commitment to providing time/scheduling for network device reboots with its staff and/or users. (b) Virus mitigation, if any, within the scope of this Agreement is predicated on Customer satisfying recommended backup schemes and having appropriate anti-virus software installed and operational, with current updates, at all times. (c) This Agreement and the Managed Services herein are contingent on Customer granting Arraya or Arraya's subcontractor permission to have secure remote access into Customer's network. Depending on the remote access solution utilized, additional connectivity charges may apply. (d) Arraya is not responsible for Customer-made changes to the network, including if Customer's or other third party personnel effect or affect configuration changes to managed network devices or servers. (e) Arraya is not responsible for loss of use of the network or for any other liabilities arising from alterations, additions, adjustments, or repairs which have been made to the network other than by Arraya. (f) Arraya reserves the right to suspend or terminate the Managed Service if conditions at the service site pose a health, safety, or security threat. (g) Customer must provide a single point-of-contact to address service-related questions or issues. (h) If any of the volumetric assumptions used to scope the Managed Service (including, time on task, locations, service consumption, and/or configuration factors) changes, Arraya reserves the right to adjust the pricing to reflect such variances.

12.   Commercially Reasonable Limits to Scope of Service

Arraya may refuse to provide Managed Services if, in its opinion, providing the Managed Service creates an unreasonable risk to Arraya or Arraya's Managed Service providers or if any requested service is beyond the scope of Managed Service. Arraya is not liable for any failure or delay in performance due to any cause beyond its control, including Customer's failure to comply with its obligations under this Exhibit D.

13.   General Customer Responsibilities

(a) <u>Access</u>. Customer represents and warrants that it has obtained permission for both Customer and Arraya to access and use, whether remotely or in-person, Customer-owned or licensed software, hardware, systems, the data located thereon and all hardware and software components included therein, for the purpose of providing the Managed Services. If Customer does not already have that permission, it is Customer's responsibility to obtain it, at Customer's expense, before Customer asks Arraya to perform the Managed Services. In addition, Customer acknowledges and agrees that Arraya requires remote access to

Customer's networks and systems in order to provide Managed Services. Accordingly, Customer agrees to provide such access in order to enable Arraya to perform its obligations under this Agreement. Customer further agrees that a failure to provide such access to Arraya will be deemed a knowing and voluntary waiver of Arraya's obligations to provide the affected Managed Services.

(b) <u>Customer Cooperation.</u> Customer understands that without prompt and adequate cooperation, Arraya will not be able to perform the Managed Services or, if performed, the Managed Services may be materially altered or delayed. Accordingly, Customer will promptly and reasonably provide Arraya with all cooperation necessary for Arraya to perform the Managed Services. If Customer does not provide reasonably adequate cooperation in accordance with the foregoing, Arraya will not be responsible for any failure to perform the Managed Service, and Customer will not be entitled to a refund.

(c) <u>On-site Obligations.</u> Where Managed Services require on-site performance, Customer will provide (at no cost to Arraya) safe and sufficient access to Customer's facilities and environment, including as applicable ample working space, electricity, safety equipment, computer/laptop, and a local telephone line.

(d) <u>Data Backup.</u> Customer will complete a backup of all existing data, software and programs on all affected systems prior to and during the delivery of the Managed Service. Customer should make regular backup copies of the data stored on all affected systems as a precaution against possible failures, alterations, or loss of data. Customer acknowledges that data security is Customer's responsibility. Notwithstanding security precautions that Arraya may, in its sole discretion, employ, the responsibility for security of Customer's data and Customer's data storage repositories, and for ensuring that any the disclosure of any data is legally compliant, rests solely with Customer and not Arraya. Accordingly, Arraya cannot and does not guarantee the privacy, security, integrity or authenticity of any information or data used in connection with Managed Services. **Notwithstanding anything set forth in this Agreement to the contrary (including, but not limited to the warranties, indemnification, and/or limitation of liability provisions set forth therein), in connection with Managed Services, Arraya will have no liability whatsoever to Customer or any third party claiming under or through Customer for: (a) any of Customer's confidential, proprietary or personal information; (b) lost or corrupted data, programs or software; (c) damaged or lost removable media; (d) the loss of use of a system or network; and/or (e) any acts or omissions, excluding gross negligence or willful misconduct, by Arraya or a third-party service provider engaged by Arraya.**

Arraya will not be responsible for the restoration or reinstallation of any programs or data.

14. **Third Party Warranties**

The Managed Services may require Arraya to access hardware or software that is not manufactured by Arraya. Some manufacturers' warranties may become void if Arraya or anyone else other than the manufacturer works on the hardware or software. Customer will ensure that Arraya's performance of Managed Services will not affect such warranties or, if it does, that the effect will

be acceptable to Customer. Arraya does not take responsibility for third party warranties or for any effect that the Managed Services may have on those warranties.

Exhibit E – Terms Applying Only to Staffing Services

The terms contained in this Exhibit E, together with the terms contained in the General Terms and Conditions to which this Exhibit E is attached, will govern the provision of Staffing Services by Arraya for Customer. In the event of a conflict between this Exhibit E and the General Terms and Conditions with regard to Staffing Services, the terms in this Exhibit E shall govern.

1.   **Overview**

Customer may engage one or more Arrraya employees or contractors ("Staffing Resource") from Arraya pursuant to a Staffing Services Agreement ("Staffing Agreement"). Each Staffing Agreement will reference this Agreement, a description of the services to be performed by the Staffing Resource, any special obligations of the Customer and/or Arraya, a schedule for the performance of the Staffing Resource's role, and a schedule of rates.

2.   **Customer Responsibilities**

 (a) Customer will provide guidance and direction to the Staffing Resource including working hours. Neither Arraya nor the Staffing Resource are responsible for any specific deliverables or project goals, unless those goals are provided by the Customer directly to the Staffing Resource during the course of the engagement.

 (b) Customer will provide Staffing Resource with the appropriate workspace including, as applicable, desk/work area, access to internet, telephone, and computing equipment.

3. **Arraya Responsibilities**

Arraya will provide a Staffing Resource with the skills and experience to perform the work described in the Staffing Agreement. The Staffing Resource's time will be tracked and Customer will be invoiced by Arraya. Customer may request a replacement Staffing Resource for any reason, which Arraya will provide in ten (10) business days.