



**Terryberry**  
**GENERAL TERMS AND CONDITIONS**

These General Terms and Conditions (the “**General Terms**”) by and between by and between the Terryberry entity identified on the applicable Order, Exhibit to these General Terms, or other similar document (“**Terryberry**”) and the customer identified on the Order signed by said customer (the “**Customer**,” together with Terryberry, the “**Parties**”, and each a “**Party**”), together with the Order referencing these General Terms and Conditions and all other terms and conditions set forth in the Order, an Exhibit to these General Terms, or incorporated by reference into the Order or these General Terms and Conditions (collectively, the “**Master Agreement**”), is entered into as of the date that the Customer accepts the Order (the “**Effective Date**”), as set forth in Section 11.3.7. These General Terms set forth the terms and conditions under which Terryberry will provide the goods and/or services to Customer, as applicable, each Party’s responsibilities hereunder, and the fees related thereto.

The Parties hereby agree as follows:

**1. SERVICES**

- 1.1. Terryberry Order Acceptance.** Customer shall pay for the services set forth in the Order (“**Services**”) and will receive a written acknowledgement from Terryberry.
- 1.2. Account Activation.** Terryberry will activate Customer’s account upon receipt of Customer’s signed Order and payment information.
- 1.3. Other Attachments.** If set forth in an applicable Order, “**Services**” may include, without limitation, the Subscription Services, Professional Services, Benefits Services, WT Cloud Services, Terryberry Services, and any other service described in an Exhibit.

**2. PAYMENT**

- 2.1. Fees.** Customer shall pay all invoices as set forth in any applicable Order without deduction or set-off (except for any amount disputed promptly and in writing by Customer in good faith), and payment will be sent to the address specified by Terryberry. If the Order does not set forth payment terms, Customer shall pay Terryberry all invoices within thirty (30) days of the invoice date. Without prejudice to Customer’s rights set out elsewhere in the Master Agreement, all fees are non-refundable and payable in advance. Terryberry may invoice for purchases of Subscription Services upon delivery.
- 2.2. Increase in Customer Employee Headcount.** For the avoidance of doubt, in the event that the number of persons employed by the Customer increases, or the Services are in any way varied from those set forth in the Order, the fees set forth in an applicable Order shall increase accordingly.
- 2.3. Expenses.** Customer shall reimburse Terryberry for the actual, necessary, and reasonable costs incurred by Terryberry in rendering the Services, which may include, but is not limited to, travel, lodging, and food (“**Terryberry Expenses**”). All travel required to achieve completion of any Services shall be subject to Terryberry’s then-current policies. For the avoidance of doubt, Customer shall also reimburse Terryberry for all Services fees and related costs and expenses incurred by Terryberry as a result of Customer’s failure to perform any work or service, provide any material, facility, or other item, or fulfill any other obligation of the Customer as set forth in this Master Agreement or an applicable SOW. Terryberry Expenses shall be payable monthly in arrears for Terryberry Expenses incurred in the applicable billing period.
- 2.4. Taxes.** Customer is liable for any sales tax, use tax, service tax, value added tax, transfer tax, excise tax, tariff, duty or any other similar tax imposed by any governmental authority arising from the fees or charges invoiced to Customer under this Master Agreement. Such taxes may be invoiced by Terryberry to Customer for all taxing jurisdictions where Terryberry is permitted or required by Applicable Law to collect such taxes unless Customer provides a valid resale certificate or other documentation required under Applicable Law to evidence tax exemption.
- 2.5. Late Payment.** Any amounts arising in relation to this Master Agreement not paid when due will be subject to a late charge of one and one-half percent (1 ½ %) per month on the unpaid balance or the maximum rate allowed by law, whichever is less.

**3. TERM, TERMINATION, AND SUSPENSION**

**3.1. Term and Renewal.**

- 3.1.1. Initial Term.** This Master Agreement shall be in effect from the Effective Date and shall continue until the end of the term set forth in the Order (the “**Initial Term**”), until terminated in accordance with the provisions set forth herein. If no term is set forth in the Order, the Initial Term shall be twelve (12) months.

- 3.1.2. Renewal.** At the end of the Initial Term and each Renewal Term (as defined herein), this Agreement will automatically renew for a successive twelve (12) month period (each a “**Renewal Term**”, together with the Initial Term, the “**Term**”) unless either party gives 90 days written notice of its intent not to renew.
- 3.2. Termination by Either Party.** Either Party may immediately terminate this Master Agreement by giving written notice to the other Party, if the other Party (i) materially breaches any obligations under this Master Agreement and fails to cure such breach within thirty (30) days after the non-breaching Party demands such cure; (ii) becomes insolvent or assigns all, or substantially all, of its assets or business for the benefit of creditors; (iii) commences bankruptcy or dissolution proceedings, has a receiver appointed for a substantial part of its assets, or ceases to operate in the ordinary course of business; or (iv) suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business (v) resolves to wind up business, dissolve, or liquidate. In addition, a Party may terminate this Master Agreement, in whole or in part, or cease provision of maintenance and support services and Professional Services or Customer’s access to the applicable Services if required to comply with Applicable Law or regulation, and such termination will not constitute a breach of this Master Agreement by the terminating Party.
- 3.3. Termination by Terryberry.** Terryberry may immediately terminate this Master Agreement by giving written notice to Customer if Customer assigns its rights or obligations in violation of the terms of this Master Agreement or if Customer fails to pay any amount due under this Master Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
- 3.4. Termination for Breach of Law.** A Party may terminate this Master Agreement, in whole or in part, or cease provision of Services or terminate Customer’s access to the applicable Services if required to comply with Applicable Law or regulation, and such termination will not constitute a breach of this Master Agreement by the terminating Party.
- 3.5. Effect of Termination.** Upon termination or expiration of this Master Agreement: (i) Customer shall immediately cease using Services and shall have no further right to access or use the applicable Services; (ii) Terryberry’s obligation to provide Services shall terminate immediately; (iii) each Party shall destroy all copies of the Confidential Information of the other Party on tangible media in such Party’s possession or control or return such copies to the other Party; (iv) upon request, each Party shall certify in writing to the other Party that it has returned or destroyed such Confidential Information; (v) any accrued rights and obligations will survive; and (vi) Customer shall immediately pay all fees and charges incurred as of the date of termination or expiration.

#### 4. CONFIDENTIALITY

- 4.1. Disclosure of Confidential Information.** The Parties acknowledge that each Party (the “**Disclosing Party**”) may disclose Confidential Information to the other Party (“**Receiving Party**”).
- 4.2. Exclusions.** Notwithstanding anything to the contrary in this Section 4, Confidential Information shall not include information which: (i) was already known to Receiving Party at the time of disclosure by Disclosing Party, and Receiving Party was under no obligation of confidentiality with respect to such information; (ii) is becomes known (independently of disclosure by the Disclosing Party) to Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (iii) is, or through no fault of Receiving Party has become, generally available to the public; or (iv) is independently developed by the Receiving Party without use of, access to, or reliance upon the Disclosing Party’s Confidential Information, and the Receiving Party can provide evidence to that effect.
- 4.3. Obligations.** The Receiving Party will not disclose the Disclosing Party’s Confidential Information to any third party, except as permitted in Section 4.4. The Receiving Party will protect and keep confidential the Disclosing Party’s Confidential Information using the same degree of care that the Receiving Party uses to protect its own nonpublic or proprietary business, technical or financial information of similar importance, but in no event less than a reasonable degree of care. The Receiving Party will not use the Disclosing Party’s Confidential Information for any purpose other than to perform its obligations or exercise its rights under this Master Agreement. The disclosure of Confidential Information pursuant to this Master Agreement is not intended in any way to transfer or grant any right, title or interest in or to such Confidential Information to the Receiving Party unless otherwise expressly indicated in this Master Agreement or by the Disclosing Party in writing.
- 4.4. Permitted Disclosure.** The Receiving Party may disclose the Confidential Information of the Disclosing Party only to those of its officers, directors, employees, agents, representatives and contractors (“**Representatives**”) who have a legitimate need to know such Confidential Information consistent with the purposes of this Master Agreement and who have agreed, either as a condition of employment, representation or in a written agreement, to be bound by terms and conditions substantially as protective as the confidentiality terms and conditions applicable to the Receiving Party under this Section 4. The Receiving Party shall be responsible and liable for any breach by its Representatives of the obligations of the Receiving Party set forth in this Section 4. The Receiving Party shall be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) approved in writing by the Disclosing Party; (ii) necessary for the Receiving Party to enforce its rights under

this Master Agreement in connection with a legal proceeding; or (iii) required by Applicable Law or by the order of a court or similar judicial or administrative body, provided that, to the extent it is legally permitted to do so, the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party at the Disclosing Party's reasonable request and expense in any lawful action to contest or limit the scope of such required disclosure. This Section 4 supersedes any and all prior or contemporaneous understandings and agreements, whether written or oral, between the Parties with respect to Confidential Information and is a complete and exclusive statement thereof.

## 5. INTELLECTUAL PROPERTY

- 5.1. **Confidential Information.** Each Party acknowledges that the Confidential Information of the other Party, and all other intellectual property rights of the other Party, are and shall remain the exclusive property of the other Party, whether or not protected under Applicable Laws, including intellectual or property laws.
- 5.2. **Terryberry Intellectual Property.** Except for the rights granted to Customer in this Master Agreement, all rights, title, and interest in and to the Services and Terryberry Intellectual Property are hereby reserved by Terryberry, its Affiliates, or its licensors. To the extent that Customer gains any Intellectual Property rights in the Services or Terryberry Intellectual Property by any means or mechanism, Customer hereby irrevocably assigns to Terryberry all of its right, title and interest in and to such Services, Intellectual Property, and Intellectual Property rights. To the extent Customer's rights are inalienable under Applicable Law, Customer hereby irrevocably waives such rights and, if such waiver is deemed invalid, grants to Terryberry the exclusive, irrevocable, perpetual, worldwide, royalty free right to use, market, modify and grant licenses to such items without identifying Customer or seeking Customer's consent. Customer agrees not to take any action that interferes with intellectual proprietary rights of Terryberry. Nothing in this Master Agreement shall transfer ownership of any Intellectual Property rights from Terryberry to the Customer.
- 5.3. **Customer Intellectual Property.** Except as provided for herein, all rights, title, and interest in and to Customer Intellectual Property are hereby reserved by Customer, its Affiliates or licensors. Nothing in this Master Agreement shall transfer ownership of any Intellectual Property rights from Customer to Terryberry.
- 5.4. **Feedback.** If Customer or any of its employees or contractors sends or transmits any communications or materials to Terryberry by mail, email, telephone, or otherwise, suggesting or recommending changes to Services, including new features or functionality relating thereto, or any comments, questions, suggestions, or the like (collectively, "**Feedback**"), Terryberry is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Terryberry on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Terryberry is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Terryberry is not required to use any Feedback.
- 5.5. **Trademark.** Customer will furnish Terryberry with all Customer Marks it desires to include in construction of the site. Customer grants to Terryberry a non-exclusive, non-transferable right and license to use the Customer Marks in association with the recognition program and all purposes contemplated under this Master Agreement.

## 6. WARRANTIES

- 6.1. **Mutual Warranties.** Each Party hereby represents and warrants to the other Party as follows: (i) such Party is an entity duly formed, organized and existing in good standing in such Party's state of formation; (ii) such Party has full power and all requisite legal and entity authority to enter into this Master Agreement; and (iii) such Party's execution, delivery, and performance of this Master Agreement shall not constitute (a) a violation of any judgment, order, or decree; (b) a material default under any material contract by which such Party or any of its material assets are bound; or (c) an event that would, with notice or lapse of time, or both, constitute such a default.
- 6.2. **Representations and Warranties by Customer.** Customer represents and warrants to Terryberry that Customer owns and will at all times own, or otherwise has and will at all times have, all necessary rights, licenses, permissions and consents in and relating to the data provided or made available by or on behalf of Customer so that, as used, disclosed, hosted, stored and processed by Terryberry in accordance with the terms of this Master Agreement, they do not and will not infringe, misappropriate, or otherwise violate any right of any third party or violate any Applicable Law. Customer further represents and warrants to Terryberry that the receipt and use by Terryberry of the Customer Marks and any other material provided by the Customer to Terryberry in the performance of this Master Agreement, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 6.3. **Third Party Materials.** Customer acknowledges and agrees that Terryberry may provide, disclose, resell, make available or facilitate the access to materials, content, works of authorship, data, software, software tools, products, goods, services and Documentation that are not proprietary to Terryberry or that are licensed, leased, acquired or otherwise obtained by Terryberry or any of its Affiliates from a third party (collectively, "**Third-Party Materials**"). Customer, as applicable, will be responsible for complying with the terms of any licenses and terms and conditions related to Customer's access, use or disclosure of Third-Party Materials. Notwithstanding anything

to the contrary in this Master Agreement or elsewhere, Third-Party Materials are provided “as-is” and “as available,” and Terryberry hereby disclaims all representations and warranties in connection with Third-Party Materials, including, without limitation, warranties of merchantability, fitness for a particular purpose, noninfringement, title and compliance with law. Customer hereby forever releases Terryberry from any and all claims and liabilities relating to or arising from Third-Party Materials.

- 6.4. **Compliance with Law.** Each Party shall comply with all Applicable Laws and regulations in connection with the performance of its obligations and the exercise of its rights under the Master Agreement.
- 6.5. **Disclaimer.** Any and all warranties, expressed, incorporated or implied, are limited to the extent and period mentioned in this Master Agreement. Other than as expressly set forth in this Master Agreement, To the maximum extent allowed by Applicable Law, Terryberry disclaims (and disclaims on behalf of its licensors) all other warranties, conditions and other terms, whether express or implied or incorporated into this Master Agreement by statute, common law or otherwise. Without limiting the foregoing, any implied warranty of merchantability, implied warranty against infringement, and implied warranty of fitness for a particular purpose are hereby expressly excluded and disclaimed by Terryberry to the maximum extent allowed by Applicable Law.

## 7. INDEMNIFICATION

- 7.1. **Terryberry Indemnification.** Terryberry will indemnify and defend Customer, its Affiliates, and its and their respective directors, officers, employees, agents, successors and permitted assigns from and against all third-party claims, suits and proceedings resulting from the violation, misappropriation, or infringement of such third party’s patent, copyright, trademark or trade secret caused by Customer’s use of the Services in accordance with this Master Agreement and applicable Documentation (as defined herein), and all directly related losses, liabilities, damages, costs and expenses (including reasonable attorneys’ fees).
- 7.2. **Customer Indemnification.** Customer will indemnify and defend Terryberry, its Affiliates, and its and their respective directors, officers, employees, agents, successors and permitted assigns from and against any third-party claims, suits and proceedings (including those brought by a government entity) resulting from: (i) an actual or alleged infringement or violation by the Customer Data of such third-party’s patent, copyright, trademark, trade secret; (ii) Terryberry’s use of the Customer Data, in accordance with the terms of this Master Agreement and (where applicable) with the terms of a DPA, violates Applicable Law, (iii) the content or structure of Customer Data; (iv) Customer’s gross negligence, fraud or willful misconduct, (v) Customer’s violation of the licensing terms for any Services further set forth in any Exhibit, and all directly related losses, liabilities, damages, costs and expenses (including reasonable attorneys’ fees); or (vi) actual or alleged infringement of a third party’s Intellectual Property rights, arising out of, or in connection with, the receipt or use in the performance of the Master Master Agreement of the Customer Marks.
- 7.3. **Procedure.** Each Party’s defense and indemnification obligations herein will become effective upon, and are subject to: (a) the Party entitled to indemnification under this Master Agreement (“**Indemnified Party**”) giving prompt notification to the Party that is obligated to provide indemnification (“**Indemnifying Party**”) of any claims in writing; and (b) the Indemnified Party providing the Indemnifying Party with full and complete control, authority and information for the defense of the claim, provided that the Indemnifying Party will have no authority to enter into any settlement or admission of the Indemnified Party’s wrongdoing on behalf of the Indemnified Party without the Indemnified Party’s prior written consent (not to be unreasonably withheld). The Indemnifying Party will promptly, and in no event less than ten (10) days before the date on which a response to such claim is due, assume and diligently pursue the defense and settlement of such claim, engaging attorneys with appropriate expertise to handle and defend the same, at the Indemnifying Party’s sole cost and expense. At the Indemnifying Party’s request and sole expense, the Indemnified Party shall reasonably cooperate with the Indemnifying Party in defending or settling any claim. If the Indemnifying Party fails to timely assume, or ceases to diligently pursue, such defense, the Indemnified Party may defend or settle the claim in such manner as it may deem appropriate at the cost of the Indemnifying Party.
- 7.4. **Remedies.** If Customer’s use of the Services is prevented by injunction or court order because of any claim subject to indemnification under Section 7.1, or, in Terryberry’s opinion, if the Services are likely to become the subject of any such claim, then Terryberry, at its sole discretion and at no additional expense to Customer, shall either: (i) procure the right for Customer to continue using the Services in accordance with the terms of this Master Agreement; or (ii) replace or modify the Services so that such Services become non-infringing. If Terryberry determines that neither (i) nor (ii) is available in a timely manner on commercially reasonable terms, then Terryberry may terminate Customer’s right to use the infringing Service, in which event Customer shall receive a pro-rata refund of all unused, pre-paid fees for the Services for the period following termination as calculated on a monthly basis for the affected Services. This Section 7.4 states the sole liability of Terryberry and the exclusive remedy of Customer with respect to any indemnification claims arising out of or related to this Master Agreement.
- 7.5. **Exclusions.** The above Terryberry obligations to defend and indemnify will not apply in the event that a claim arises from or relates to: (i) a modification of the Services made by, or at the request or direction of, Customer; (ii) the combination of the Services with an item, technology, software, data or intellectual property not supplied by

or approved in writing by Terryberry; (iii) the use of the Services in a manner not intended or allowed by this Master Agreement; (iv) any portion of the Services based upon specifications provided by or on behalf of Customer; (v) Third-Party Materials; or (vi) data provided or made available by or on behalf of Customer.

## 8. LIMITATION OF LIABILITY

- 8.1. Liability Cap.** Except for liability caused by Terryberry's intellectual property infringement indemnification obligations in [Section 7.1](#), Customer's indemnity in [Section 7.2](#), and Customer's payment obligations herein, in no event will either Party's maximum aggregate liability arising out of or related to this Master Agreement, regardless of the cause of action and whether in contract, tort (including negligence), warranty, indemnity or any other legal theory, exceed the total amount paid or payable to Terryberry under this Master Agreement during the twelve (12) month period preceding the date of initial claim. The exclusions and limitations set forth in this [Section 8.1](#) shall apply even if an exclusive remedy of Customer under this Master Agreement has failed of its essential purpose.
- 8.2. Consequential Damages.** Neither Party or its Affiliates will have any liability to the other Party, its Affiliates, or any third party for any loss of profits or revenues, loss of goodwill, or for any indirect, special, incidental, consequential or punitive damages arising out of, or in connection with the supply, use, or performance of, or inability to use, the Services or arising out of or in connection with this Master Agreement, however caused, whether in contract, tort (including negligence), indemnity, breach or failure of express or implied warranty, breach of contract, misrepresentation, negligence, strict liability in tort or otherwise, or any other legal theory, and whether or not the Party has been advised of the possibility of such damages.
- 8.3. Allocation of Risk.** Customer and Terryberry expressly acknowledge and agree that the limitations and exclusions contained in this [Section 8](#) have been the subject of active and complete negotiations between the Parties and represent the Parties' agreement as to the allocation of risk between the Parties based upon the level of risk to Terryberry and Customer associated with their respective obligations under this Master Agreement. The Fees payable to Terryberry reflect this allocation of risk and the limitation and exclusion of damages set forth in this [Section 8](#). The Parties acknowledge that, but for the limitations and exclusions set forth in this [Section 8](#), the Parties would not have entered into this Master Agreement.
- 8.4. Construction.** This Master Agreement is not intended to and will not be construed as excluding or limiting any liability which cannot be limited or excluded by Applicable Law, including liability for (a) death or bodily injury caused by a Party's negligence; or (b) gross negligence, willful misconduct, or fraud.

## 9. PROFESSIONAL SERVICES

- 9.1. Purchase of Professional Services.** Customer may separately purchase from Terryberry Professional Services in relation to the Subscription Services as may be generally available by Terryberry to its customers, pursuant to Terryberry's then applicable professional services terms.
- 9.2. Responsibilities of the Parties.**
- 9.2.1. Terryberry Responsibilities.** Terryberry shall use reasonable endeavors to meet any performance dates or timescales specified in the Order or SOW (including the Go Live Date, as defined and further set forth in [Exhibit D](#)), but any such dates or periods shall be estimates only and time for performance by Terryberry shall not be of the essence of this Master Agreement.
- 9.2.2. Customer Responsibilities.** Customer shall (i) cooperate with Terryberry in all matters relating to the Services; (ii) if requested, provide to Terryberry, its agents, subcontractors, consultants and employees in a timely manner and at no charge, access to the Customer Data; (iii) provide Terryberry with any information, literature or designs which they may require to provide the Services; and (iv) continue to grant to Terryberry the license set out in [Section 5.5](#).
- 9.3. Customer Default.** If Terryberry's performance the Professional Services is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees ("**Customer Default**"), then:
- without limiting or affecting any other right or remedy available to it, Terryberry shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Terryberry's performance of any of its obligations;
  - Terryberry shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Terryberry's failure or delay to perform any of its obligations as set out in this [Section 9](#); and
  - the Customer shall – if requested by Terryberry - reimburse Terryberry on written demand for any costs or losses reasonably sustained or incurred by Terryberry arising from the Customer Default subject strictly to Terryberry using all reasonable endeavors to minimize or mitigate such costs and losses.

- 9.4. Professional Services Warranty.** Terryberry warrants that (a) it and each of its employees, consultants and subcontractors, if any, that it uses to provide and perform Professional Services has the necessary knowledge, skills, experience, qualifications, and resources to provide and perform the services in accordance with this Master Agreement; and (b) the Professional Services will be performed for and delivered to Customer in a good, diligent, workmanlike manner in accordance with industry standards. Terryberry's ability to successfully perform hereunder is dependent upon Customer's adherence to its obligations in Section 9.2.2. If, through no fault or delay of Customer, the Professional Services do not conform to the foregoing warranty, Customer shall provide written notice to Terryberry within thirty (30) days of Terryberry's delivery of the Professional Services, and Terryberry shall then re-perform the non-conforming portions of the Professional Services. This Section 9.4 states the sole liability of Terryberry and the exclusive remedy of Customer with respect to any Professional Services arising out of or related to this Master Agreement.
- 9.5. Rates and Cancellation.** Mutually agreed upon Professional Services performed outside of business hours, overnight, during the weekend, or on a national holiday will be charged at double the rates set forth in Terryberry's then-applicable price list. Terryberry may invoice Customer for Professional Service days in whole day or partial day increments. If Customer cannot accept invoices for partial Professional Services days, as noted on the applicable SOW, Terryberry may invoice Customer in advance for all Professional Services herein upon receipt of an Order. Cancellation charges for Professional Services will be set forth in the applicable SOW.
- 9.6. Non-Solicitation of Personnel.** Neither Party shall solicit, or attempt to employ or hire, in any capacity, any of the other party's personnel assigned to provide Professional Services to a Party, or introduced to a Party in connection with the Professional Services during the period in which such services are provided and for a period of one (1) year thereafter. In the event that either Party employs or hires any of the other Party's personnel in breach of this Section 9.6, the breaching Party shall pay to the other Party upon demand as liquidated damages a sum equal to the annual salary of such personnel at the time of breach. For the avoidance of doubt this Section 9.6 shall not apply in the event that either Party hires the other Party's personnel as a direct result of a previously placed commercial advertisement.

## 10. GENERAL PROVISIONS

- 10.1. Structure.** Each fully-executed Order shall be deemed to incorporate by reference all of the terms and conditions of this Master Agreement and shall constitute a separate and binding contract between Terryberry or its Affiliate that is the signatory to the Order and Customer. An Affiliate of Terryberry may contract for Services by executing a Order. In such case, a Terryberry Affiliate shall be deemed to be "Terryberry" and a "Party" for purposes of this Master Agreement. In the event there are any conflicts or any inconsistencies between the terms and conditions of the Order and the terms and conditions of this Master Agreement, the terms and conditions of this Master Agreement shall govern, unless the Order specifically references the conflicting or inconsistent term of this Master Agreement and specifically states that the conflicting or inconsistent term of the Order shall govern, then only with respect to such Order, the terms and conditions of the Order shall govern.
- 10.2. Construction.** All references to and mentions of the word "including" or the phrase "e.g." means "including, without limitation." "Or" is not exclusive. The terms and conditions of this Master Agreement shall not be construed in favor of or against either Party by reason of the extent to which either Party or its professional advisors participated in the preparation or drafting of this Master Agreement.
- 10.3. Audit Rights.** During the term of this Master Agreement and for twelve (12) months thereafter, Terryberry may audit Customer's use of Services to ensure that Customer is in compliance with this Master Agreement upon reasonable prior written notice. Upon such notice, Customer will provide a Terryberry representative with reasonable access to all relevant records during regular business hours.
- 10.4. Force Majeure.** Any delay in or failure of performance by either Party under this Master Agreement, other than a failure to pay amounts when due, shall not be considered a breach of this Master Agreement, and shall be excused to the extent caused by any occurrence beyond the reasonable control of such Party. Such acts shall include, but not be limited to, fortuitous events and acts of God; wars, riots, terrorism and insurrections; laws, decrees, ordinances and governmental regulations; change in Applicable Laws; strikes and lockouts; transportation stoppages or slowdowns; hurricanes, earthquakes, floods, fires and explosions; pandemics and epidemics; and shelter-in-place or similar orders. Notwithstanding the foregoing, if such act or condition beyond the reasonable control of such Party continues for a period of one hundred and eighty (180) days or more, the unaffected Party may, on notice to the Party affected, terminate this Master Agreement, and neither Party shall have any further obligation to the other save for those provisions hereunder which, by their terms, survive the termination or expiration of this Master Agreement.
- 10.5. Compliance with Export Controls.** Customer will not export, re-export, divert, transfer, or disclose, directly or indirectly, or allow the use of, any Service or Terryberry Documentation, or any direct product thereof in violation of applicable United States export control requirements. Without limiting the generality of the immediately preceding sentence, Customer will not (i) re-export the Service or Terryberry Documentation to, or allow the use of the Service or Terryberry Documentation by, an unauthorized or prohibited destination; (ii) transfer the Service

or Terryberry Documentation to, or allow the use of the Service or Terryberry Documentation by, any Prohibited Person; or (iii) transfer, use or permit or authorize the use of the Service or Terryberry Documentation in any unauthorized end-use (i.e. activities related to the proliferation of weapons of mass destruction).

**10.6. Commercial Computer Software.** If Customer is an agency or contractor of the United States Government, Customer acknowledges and agrees that: (i) the Services (including any software forming a part thereof) were developed entirely at private expense; (ii) the Services (including any software forming a part thereof) in all respects constitute proprietary data belonging solely to Terryberry; (iii) the Services (including any software forming a part thereof) are not in the public domain; and (iv) the software forming a part of the Services is “Commercial Computer Software” as defined in sub-paragraph (a)(1) of DFAR section 252.227-7014 or FAR Part 12.212. Customer shall provide no rights in the Software (including any software forming a part thereof) to any U.S. Government agency or any other party except as expressly provided in this Master Agreement.

**10.7. No Third Party Beneficiaries.** Except for indemnified parties in Section 7, no person or entity other than the Parties hereto, and their respective successors and/or assigns, shall have any right, remedies, obligations or liabilities under the terms of this Master Agreement.

**10.8. Notice.** Any and all notices, requests, demands and other communications required or otherwise contemplated to be made under this Master Agreement shall be in writing and in English to the address set forth below, provided by one or more of the following means and deemed to have been duly given (i) if delivered personally, when received; (ii) if delivered by certified or registered mail (postage prepaid and return receipt requested), when received; (iii) if transmitted by facsimile (to those for whom a facsimile number is set forth below), on the date of receipt of the transmission confirmed by receipt of a transmittal confirmation; or (iv) if delivered by courier service, on the third business day following the date of deposit with such courier service. Either Party may change its address by giving notice as provided herein of the new address to the other Party.

To Terryberry: Notices to Terryberry shall be sent to the address specified for the applicable Terryberry entity below

To Customer: Notices to Customer shall be sent to the address provided on the Order.

**10.9. Successors and Assigns.** All provisions of this Master Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against, the respective successors and permitted assigns of Terryberry and Customer.

**10.10. Governing Law; Jurisdiction.**

**10.10.1. Generally.** Each Party agrees to the applicable governing law below without regard to choice or conflict of law rules, and to the exclusive jurisdiction of the applicable courts below with respect to any dispute, claim, action, suit, or proceeding (including non-contractual disputes or claims) arising out of or in connection with this Master Agreement, or its subject matter formation.

Terryberry entity entering into Master Agreement	With Principal Office at:	Choice of Law	Exclusive Jurisdiction
Terryberry Company LLC	2033 Oak Industrial Dr. NE Grand Rapids, MI 49505	Laws of the State of Michigan, U.S.A	Courts of Kent County, Michigan, U.S.A.
Walker Tracker, Inc.	2033 Oak Industrial Dr. NE Grand Rapids, MI 49505	Laws of the State of Michigan, U.S.A	Courts of Kent County, Michigan, U.S.A.
Terryberry Ltd	13-15 Beech Lane, Macclesfield, Cheshire, SK10 2DR	Laws of England and Wales	Courts of Cheshire, England
iCOM Works Ltd	8 Ash Tree Court, Woodsy Close, Cardiff Gate Business Park, Cardiff, CF23 8RW	Laws of England and Wales	Courts of Cheshire, England
Williams Recognition Ltd, a Terryberry Company	4027 Brodeur Sherbrooke, QC J1L 1K4	Laws of the Province of Quebec, Canada	Courts of Quebec, Province of Quebec, Canada

**10.10.2. Injunctive Relief.** Notwithstanding the foregoing, either Party may seek injunctive relief against the other Party from any other judicial or administrative authority pending the resolution of such controversy or claim.

**10.10.3. Application of Legislation.** Except to the extent expressly required by Applicable Law, neither the United Nations Convention on Contracts for the International Sale of Goods 1980, nor any

international and domestic legislation implementing such Convention, applies to this Master Agreement. The Parties' rights and obligations under this Master Agreement are solely and exclusively as set forth in this Master Agreement and the Uniform Computer Information Transactions Act ("UCITA"), whether enacted in whole or in part by any state or applicable jurisdiction, regardless of how codified, does not apply to this Master Agreement and is hereby disclaimed. The Parties will amend this Master Agreement as may be necessary to comply with any mandatory disclaimer language required by UCITA in any applicable jurisdiction

- 10.11. Waiver of Jury Trial.** To the extent not prohibited by Applicable Law, each of the Parties hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or related to this Master Agreement.
- 10.12. Equitable Relief.** The Parties agree that a breach of Section 4 may result in irreparable and continuing damage for which there will be no adequate remedy at law, and each Party will be entitled to seek temporary or permanent injunction or other equitable relief restraining such breach or threatened breach from any court of competent jurisdiction without the need for posting bond and/or a decree for specific performance, and such other relief as may be proper.
- 10.13. Assignment.** Neither Party may assign any of its rights or obligations under this Master Agreement without the other Party's prior written consent, which will not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign any and all of its rights and obligations under this Master Agreement to a successor in interest in the event of a merger or acquisition or to an Affiliate, upon written notice to the other Party. Any purported assignment, pledge, delegation or transfer in violation of this Section 10.13 is null and void.
- 10.14. Waivers; Amendments.**
- 10.14.1.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Master Agreement on one occasion shall not be deemed a waiver of any other provision or of such provision on any other occasion. Subject to Section 10.14.2, this Master Agreement may be amended only by a written document signed by duly authorized representatives of each Party.
- 10.14.2.** Notwithstanding anything to the contrary herein or elsewhere, Terryberry may amend this Master Agreement from time to time by posting an amended version at its website, available at [www.terryberry.com/legal/terms-and-conditions/](http://www.terryberry.com/legal/terms-and-conditions/). Such amendment will be deemed accepted and become effective 30 days after such notice (the "**Proposed Amendment Date**") unless Customer first gives Terryberry written notice of rejection of the amendment. In case of such rejection, this Master Agreement will continue under its original provisions, and the amendment will become effective at the start of Customer's next renewal term following the Proposed Amendment Date (unless this Master Agreement is earlier terminated in accordance with its provisions). Customer's continued use of the Service following the effective date of an amendment will confirm Customer's consent thereto.
- 10.14.3. Severability.** If a court of competent jurisdiction holds any provision, or part of any provision, of this Master Agreement to be illegal or invalid, the provision, or the affected part of such provision, shall be null and void and deemed automatically severed from this Master Agreement. Any such holding shall not affect the legality or validity of the remaining provisions or remaining parts or unaffected provisions of this Master Agreement.
- 10.15. Relationship of The Parties.** The relationship between the Parties is that of independent contractors only, and nothing in this Master Agreement shall be interpreted or construed to create a partnership, joint venture, employer-employee, or agency relationship, or any other relationship between the Parties, other than that of independent contractors. Neither Party shall have the power to obligate the other Party in any manner whatsoever unless expressly provided in this Master Agreement.
- 10.16. Counterparts.** The Order may be executed in counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument. The exchange of a fully executed Master Agreement or Order (in counterparts or otherwise) by fax, .pdf, .pic, .tif, .jpg, other legible image file or by widely accepted electronic signature services (ex. DocuSign) shall be sufficient to bind the Parties to the terms and conditions of this Master Agreement.
- 10.17. Remedies.** Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Master Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Master Agreement.
- 10.18. Entire Master Agreement.** This Master Agreement constitutes the entire Master Agreement between the Parties regarding this matter, and they supersede all prior discussions or Master Agreements related to the same. Should Customer utilize a purchase order (or other form which includes additional terms and conditions), any additional terms and conditions in such document shall not bind Terryberry, unless such additional terms and conditions have been expressly acknowledged in writing by Terryberry in an amendment as overriding this Master



Agreement. Fulfillment of Customer's order by Terryberry does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend this Master Agreement.

## 11. DEFINITIONS AND INTERPRETATION.

- 11.1. Headings.** The section and subsection headings used herein are for reference and convenience only and shall not enter into the interpretation thereof.
- 11.2. English Version.** This Master Agreement shall be executed in its English language version. In the event such documents are also executed in a different language version other than English, the English-language version shall prevail in the event of any discrepancies, inconsistencies, or conflicts between such versions.
- 11.3. Definitions.** Capitalized terms shall have the meaning set forth below. Defined terms stated in the singular may be used in the plural, and vice versa.
- 11.3.1. "Affiliate"** means, with respect to a Party, any entity or individual that directly or indirectly controls, is controlled by, or is under common control with such Party. For purposes of the Affiliate definition, an entity or individual "controls" an entity if it has the power to direct the management and policies of the entity, through ownership of more than 50% of the voting securities of an entity, representation on its board of directors or other governing body, or by contract.
- 11.3.2. "Applicable Law(s)"** means all laws, statutes, codes, rules, regulations, and other pronouncement having the effect of law of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision, including those promulgated, interpreted or enforced by any governmental or regulatory authority, and any order of a court or governmental agency of competent jurisdiction in effect as of the Effective Date and as they may be amended, changed or modified from time to time.
- 11.3.3. "Confidential Information"** means the nonpublic or proprietary business, technical or financial information disclosed to the Receiving Party by or on behalf of the Disclosing Party pursuant to this Master Agreement and includes all information marked by the Disclosing Party as confidential or proprietary and any other information, whether written or oral, that the Receiving Party should reasonably understand is confidential or proprietary to the Disclosing Party.
- 11.3.4. "Customer Marks"** means all registered or common law Customer trademarks, trade names, Services marks, slogans, and logos and such other Customer trademarks or logos as Customer identifies from time to time to Terryberry for branding or other use in connection with the Services.
- 11.3.5. "Documentation"** means the user guides, installation documents, and specifications for the Subscription Services that are made available from time to time by Terryberry in electronic or tangible form, but excluding any sales or marketing materials.
- 11.3.6. "Intellectual Property"** means a Party's proprietary material, technology, or processes, including, but not limited to: services, software tools, proprietary framework and methodology, hardware designs, algorithms, works of authorship, inventions, deliverables, work product, trade secrets and developments objects and Documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned or licensed by a third party), and any derivatives, improvements, enhancements or extensions of such Intellectual Property conceived, reduced to practice, or developed. For avoidance of doubt, Intellectual Property of Terryberry shall also include Intellectual Property created, developed, conceived, acquired, authored or reduced to practice by or on behalf of a Terryberry, whether alone or jointly with others.
- 11.3.7. "Order"** means Terryberry's quote accepted by Customer via Customer's purchase order or other ordering document received by Terryberry to order Terryberry's Services (including, but not limited to, a fully executed Order), which references the Services, pricing, payment terms, quantities, and other applicable terms set forth in an applicable Terryberry quote or ordering document.
- 11.3.8. "Professional Services"** means implementation services, design services, consulting services and/or other professional services provided to Customer by Terryberry under a Order or SOW.
- 11.3.9. "Prohibited Persons"** means anyone on the U.S. Commerce Department's Denied Persons, Entity, or Unverified Lists or the U.S. Treasury Department's list of Specially Designated Nationals and Consolidated Sanctions list.
- 11.3.10. "SOW" or "Statement of Work"** means a written order executed by the Parties which identifies the Professional Services ordered by Customer, including the description, and associated fees.