

This Master Terms and Conditions ("Agreement") between **CAP5 Technology Solutions LLC** ("CAP5") and Customer establishes the terms and conditions governing CAP5's services. This Agreement is effective on the date any other services agreement is signed by both parties.

1. SERVICES

1.1. Acquiring Services. When the customer requests specific consulting or technical services, CAP5 will provide such services on a contract basis. The Customer will not retain the services of any CAP5 employee or contractor without prior written contract for services through CAP5.

1.2. Service Agreements ("SA"). CAP5 and the Customer may enter into one or more Service Agreements (SA), which shall be incorporated by reference to this Master Terms and Conditions. Each SA will specify general services to be performed, the type of CAP5 technical resources assigned, pricing and any special terms and conditions not covered in this agreement. All SA terms and conditions, and the customer's promise to pay, will be binding when SA is signed by both parties. In the absence of an applicable and signed SA, CAP5 may still provide technical services as requested by Customer, and the Customer agrees to pay CAP5's Standard Billable Rates for such services.

1.3. Warranties. CAP5 will refer CAP5 employees and / or contractors qualified to meet the customer's requests. CAP5 warrants that none of its referred or assigned employees are unauthorized aliens as defined in the Immigration Reform and Control Act of 1986. CAP5 warrants that services performed by its employees under this Agreement will be performed in a good, workmanlike manner, satisfying at least generally accepted practices or procedures.

1.4. Employee Benefits. CAP5 will pay and be fully responsible for applicable federal, state and local taxes, and FICA requirements for CAP5 employees' services while on assignment to the customer. CAP5 will indemnify the customer based on any claims for unpaid federal, state, or local taxes or FICA requirements from CAP5 employees' services performed while assigned to the customer. CAP5 will indemnify the customer for any Fair Labors Standards Act claims for minimum wage and overtime payments to CAP5 employees.

1.5. Non-Solicitation. During the Agreement's term and for one year following its termination, each party agrees that it will not hire the other party's employee without the other party's written permission. If one party, or its affiliates, extends an employment offer to any of the other party's employees, the hiring party will immediately pay the other party, as liquidated damages, an amount equal to 25% of the accepting employee's new annual compensation. The non-hiring party will be entitled to any other remedies at law to obtain injunctive relief.

2. PAYMENT FOR SERVICES

Hardware and software purchases, if applicable, require payment in-full, up-front. Labor charges are invoiced monthly. Payment is due upon receipt of each invoice. Failure to provide timely payment may result in suspension or termination of services at CAP5's discretion. Suspension or termination of services due to non-payment does not invalidate payment obligations of the customer under the terms of this agreement. The customer will pay all undisputed amounts in CAP5's invoice, including any applicable sales tax, in U.S. currency within fifteen (15) days of the invoice date. If the Customer fails to pay for charges under this Agreement within thirty (30) days of the invoice date, CAP5 will charge, and the Customer agrees to pay, a late fee of \$25 and interest on overdue charges equal to the lesser of 3% per month or the maximum allowed by law. Disputed items on each invoice must be brought to the attention of CAP5 by the

Customer in writing within thirty (30) days of the invoice date, or full payment for the invoice is due and payable on that date. Customer agrees to pay all legal costs incurred by CAP5 to enforce payment.

3. CONFIDENTIALITY

3.1. Proprietary Information Defined.

A. "Proprietary Information" means:

- (1) The Customer, the customer's affiliates, and the customer's possession of third party business and technical information made available, directly or indirectly, to CAP5, including, but not limited to, research, development, procedures, operations, products, data, and designs;
 - (2) a party's written information that is clearly and conspicuously marked as proprietary or confidential, or that has a written notice that the information is confidential; or (3) a verbal communication stating that the information is confidential or proprietary.
- B. Proprietary Information does not include information that is:
- (1) published or is in the public domain through no fault of the receiving party;
 - (2) within the receiving party's legitimate possession prior to disclosure with no confidentiality obligations, or lawfully received from a third party having rights with no restriction;
 - (3) independently developed by the receiving party without breaching this Agreement; or
 - (4) revealed with the disclosing party's consent.

3.2. Confidentiality Responsibilities. Neither party will disclose to any third party either the terms of this Agreement or Proprietary Information. Proprietary Information will remain the disclosing party's property. A party receiving Proprietary Information will:

- A. Use or reproduce the information only to perform the Agreement;
- B. Protect the information from disclosure or unauthorized use with at least the same care as it provides for its own Proprietary Information; but in no event, less than a reasonable degree of care.
- C. Limit access to the information to its employees or agents who need the information to perform under the Agreement;
- D. Return or destroy information, including copies, after the need has expired, at the disclosing party's request, or when the Agreement terminates; and
- E. Immediately notify disclosing party if the other party is required to produce proprietary information by court order or government authority. Disclosing party may move the ordering court or authority for a protective order or other appropriate relief.

4. INDEMNIFICATION

4.1. Personal Injury and Property Damage. Each party will indemnify and defend the other party, its directors, officers, employees, agents and their successors against all claims for damages, losses or liabilities arising directly from performance of this Agreement made for personal injury, death, or damage to personal property resulting from the negligent or willful misconduct, errors, or omissions of the indemnifying party or its subcontractors, directors, officers, employees or agents.

4.2. Insurance. CAP5 carries at least the following insurance:

Commercial General Liability

Each Occurrence \$1,000,000, Personal Injury \$1,000,000,

General Aggregate \$5,000,000

4.3. Duty to Defend. The party seeking indemnification under Subsection 4.1 above must promptly notify the other party in writing of any such

claim and give the indemnifying party full and complete authority, information and assistance for the claim's defense and settlement. The indemnifying party will retain the right, at its option, to settle or defend the claim, at its own expense and with its own counsel. The indemnified party will have the right, at its option, to participate in the settlement or defense of the claim, with its own counsel and at its own expense, but the indemnifying party will retain sole control of the claim's settlement or defense. To be indemnified under this provision, the party seeking indemnification must not by any act (including any admission or acknowledgment) materially impair or compromise a claim's defense.

5. OTHER TERMS AND CONDITIONS

5.1. Warranties. ANY WARRANTIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE FOR PARTICULAR PURPOSE, OR WARRANTIES OF NON-INFRINGEMENT.

5.2. Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT. Consequential, incidental, and indirect damages include, but are not limited to, lost profits, lost revenues, and loss of business opportunity, whether or not the other party was aware or should have been aware of the possibility of these damages.

5.3. Independent Contractor. The Customer is an independent contractor under this Agreement. The parties' relationship and this Agreement will not constitute or create an association, joint venture, partnership, or other form of legal entity or business enterprise between the parties, their agents, employees or affiliates.

5.4. Use of Name, Service Marks, Trademarks or Trade Secrets. Neither party will use the name, service marks, trademarks, or trade secrets of the other party or any of its affiliates for any purpose without the other party's written consent.

5.5. CAP5 Partner Services. – CAP5's Partner Services are the exclusive right of CAP5 in this agreement. The customer, without written permission from CAP5, cannot request the services of partnerships established by CAP5. Written confirmation from CAP5 must be received prior to engaging CAP5's partners.

5.6. Work Hours. Unless otherwise agreed, CAP5 employees assigned to the customer to provide services will observe the customer's standard office hours, including holidays.

5.7. Cost of Living Adjustment. After the first 12 months of an SA's term in association with this agreement and in each subsequent contract year, CAP5 reserves the right to increase the rates in an SA by up to 10%. If the CAP5 increases rates, the CAP5 will provide the customer 60 days written notice before new rates will become effective.

5.8. Force Majeure. Neither party will be responsible for failure to comply or for delay in performance of this Agreement, if the failure is directly or indirectly caused by events beyond the parties' reasonable control, including, but not limited to, natural disasters, actions or decrees by governmental bodies, or acts of God.

5.9. Compliance. Each party and their employees will comply with applicable laws and regulations of government authorities.

5.10. Applicable Laws. The applicable state law governing this Agreement will be the law of Texas excluding choice of law principles.

5.11. Assignment. Neither party may assign any rights or obligations under this Agreement without the other party's prior written consent.

5.12. Arbitration & Jury trial. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by binding arbitration in Houston, Texas, administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. Disputes, claims, and controversies subject to final and binding arbitration under this Agreement include, without limitation, all those that otherwise could be tried in a court to a judge or jury in the absence of this Agreement. By agreeing to submit all disputes, claims and controversies to binding arbitration, each of the parties expressly waives its rights to have such matters heard or tried in a court before a judge or jury or in any other tribunal. Any award shall be final, binding and conclusive upon the parties, subject only to judicial review provided by statute, and a judgment rendered on the arbitration award may be entered in any state or federal court having jurisdiction thereof.

5.13. Mediation Preceding Arbitration. If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by participating in at least four hours of mediation in a mutually agreeable location in Houston, Texas, administered by a mutually agreeable mediator and conducted under the Commercial Mediation Procedures of the American Arbitration Association before resorting to arbitration or some other dispute resolution procedure. The cost of mediation shall be borne equally by both parties. If they do not reach such solution within a period of 60 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules.

5.14. Inconsistent Provision. This Agreement will control over any inconsistent provision in a SA.

5.15. Amendments. Customer and CAP5 may modify this Agreement only by written amendment signed by the parties' officers or authorized designees. Any oral modification contrary to this Agreement's terms is not admissible in any dispute, whether in a court of law or arbitration.

5.16. Notices. Any notice required under this Agreement or related to a dispute must be submitted in writing to the appropriate party's address shown below. If a notice relates to a dispute, Customer will also provide a copy to CAP5, Inc., c/o CAP5 Business Development Office, 4212 San Felipe, Suite 421, Houston, TX 77027.

5.17. Headings. Headings are for reference only and have no effect on any provision's meaning. If any provision is illegal or unenforceable, the Agreement's unaffected provisions will remain in effect. The parties will negotiate a substitute provision consistent with the parties' original intention.

5.18. Reliance. In accepting this agreement, the parties are not relying on any representations or promises not in this agreement. When signed by the parties this agreement will constitute the parties' entire understanding regarding services and supersede all agreements or discussions, oral or written, regarding services, unless explicitly stated in this Agreement.