



MainNerve, Inc.
Master Services Agreement – Terms and Conditions

MainNerve shall perform services (“Services”), and provide deliverables (“Deliverables”) for its customers (“Customer”) as described in a Master Services Work Order (“Work Order”) to be executed by the parties from time to time and upon such execution of any Work Order each party shall be subject to the terms and conditions set forth in this Master Services Agreement (“Agreement”).

1.1. Project Services. MainNerve shall provide certain risk assessment, security design, system implementation and maintenance Services in support of current and future needs identified by both Customer and MainNerve either in conjunction with or separate from one another more particularly described on the Work Order signed by Customer. MainNerve’s Deliverables may include: Information Technology (“IT”) consulting, assessment, implementation and maintenance of security systems infrastructure components, policies, and practices (hereinafter “Project or System”). The list of services provided on MainNerve’s website at <http://mainnerve.com/services/> discusses general guidelines for commonly requested work items across MainNerve’s customer base. This listing is provided merely as a convenience and should not be considered inclusive of the Deliverables (which are expressly set forth in the Work Order) or exclusionary of other potential items or requests.

1.2 Third Party Resources. MainNerve shall not be responsible for securing any intellectual property rights that may be owned or retained by third parties, unless called for in the Work Order. Customer’s use of any third-party intellectual property, including licensed software, shall be subject to the applicable license restrictions of such third parties. Any statement or reference in a Work Order that MainNerve is responsible for obtaining third-party resources, including services, equipment, facilities, or intellectual property rights, is subject to the availability of those resources.

1.3 Independent Contractor. MainNerve’s legal relationship established by this Agreement is that of an independent contractor and not that of an employee. Except as provided in the Work Order or these Terms and Conditions, MainNerve shall also pay any and all costs incurred in the performance of this Agreement except as provided above or in the Work Order. Such costs include, but are not limited to, all taxes, all insurance (including but not limited to health insurance), automobile expenses, and supplies. MainNerve will be responsible for its own payroll, FICA, FUTA, SDI, SUI, federal and state withholding taxes, and any and all other taxes relating to Services rendered under this Agreement, and will hold the Customer harmless from any of the above-described taxes. To the extent MainNerve provides Services of its employees and agents, MainNerve warrants that all such agents and employees will have the specific skills and experience required. No joint venture, partnership, employment, or agency relationship exists between Customer and MainNerve as a result of this Agreement or use of the Deliverables.

1.4. Assignment of Personnel. Customer may interview the personnel MainNerve assigns to Customer’s work. If Customer reasonably determines that such personnel are not appropriate for the work being assigned based on their specific or general skills or their background and experience, MainNerve shall assign other qualified personnel. Customer will advise MainNerve of the individuals to whom MainNerve’s personnel will consult for purposes of day-to-day work assignments. Customer and MainNerve shall develop appropriate administrative procedures for coordinating with MainNerve’s personnel, under the direction of Customer’s representative. Should Customer not be reasonably satisfied with the performance of one or more of MainNerve’s personnel, MainNerve shall use reasonable efforts to accommodate the request, upon thirty (30) days notice.

1.5. Scheduling. Customer will use commercially reasonable efforts to accommodate performance by MainNerve of the Deliverables as set forth in the Work Order. Should any personnel of MainNerve be unable to perform scheduled Services because of causes beyond MainNerve’s reasonable control, MainNerve will attempt to replace such employee within a reasonable time, but MainNerve shall not be liable for delays resulting from factors beyond its control, nor shall Customer be responsible for any payments due hereunder for the period of said delays. Notwithstanding the foregoing, if MainNerve’s Services are not performed according to Customer’s schedule, and such default is not cured within thirty (30) days after written notice, Customer shall have the right to terminate this Agreement.

1.6. Place of Work. MainNerve’s personnel will perform their work for Customer both remotely, as agreed by Customer and MainNerve, and on

the Customer’s premises. Customer agrees to provide necessary working space and facilities, and any other reasonable services and materials MainNerve or its personnel may need in order to perform the work assigned to them.

1.7. Development of the Deliverables. Development of the Deliverables shall proceed according to the Work Order, provided that Customer furnishes a sufficient number of trained and experienced personnel and delivers all necessary information and materials in a timely fashion, and if not, then to the extent MainNerve’s obligations are dependent on such personnel, information, or materials shall be extended to reflect Customer’s or Customer’s agents’ delays. MainNerve shall deliver the Deliverables to Customer for approval as provided in the section entitled “Deliverables Acceptance,” which shall not be unreasonably withheld, in the manner and on the dates specified in the attached Exhibits.

1.8. Deliverables Acceptance. Customer shall have ten (10) business days after delivery of the Deliverables to evaluate the Deliverables to determine whether they conform to the applicable specifications in the Work Order, including any modifications to the applicable specifications that have been mutually agreed upon in writing by the parties. The Deliverables shall be deemed accepted by Customer, unless it provides written notice to MainNerve before the end of the ten (10) business-day evaluation period that the Deliverables do not conform to the specifications. Such notice shall describe with reasonable particularity the nature of the nonconformance. If Customer gives timely notice that the Deliverables are nonconforming, MainNerve shall have ten (10) business days from receipt of the notice to make and submit to Customer changes that are required to correct the deficiencies described in the notice. Customer shall have ten (10) business days from receipt of the corrected Deliverables to reevaluate the Deliverables for conformance with the specifications. The corrected Deliverables shall be deemed accepted by Customer, unless it provides written notice to MainNerve before the end of the ten (10)-business day reevaluation period that the Deliverables still do not conform to the specifications. In the event the corrected Deliverables are nonconforming, this process shall continue in ten (10) business-day intervals until the Deliverables are accepted or the Agreement is terminated. Customer shall not unreasonably withhold or delay acceptance. Upon acceptance of the Deliverable, Customer shall pay the designated balance due under the Work Order.

1.9. Term. Unless otherwise set forth in the Work Order, the term (“Term”) of this Agreement shall commence on the Effective Date set forth in the Work Order and shall continue for twelve (12) months. Unless notice of termination is received from either party, in accordance with the section entitled “Notices,” no more than sixty (60) and no less than thirty (30) days prior to the end of the Term, this Agreement shall automatically renew for an additional twelve (12) months, and this automatic renewal shall repeat every twelve (12) months for so long as Customer seeks or obtains Services from MainNerve.

1.10. Termination for Breach. This Agreement may be terminated by Customer if MainNerve breaches a material obligation hereunder and it is not cured within thirty (30) days after notification of the breach in accordance with the section entitled “Notices.”

1.11. Remaining Payments. Within sixty (60) days of termination of this Agreement irrespective of the reason, MainNerve shall submit to Customer an itemized invoice for any fees or expenses accrued for work performed up to the termination date and as required by this Agreement and Customer shall pay all fees and expenses properly owing to MainNerve within ten (10) days of receipt of said invoice.

1.11.1. Breach by MainNerve. In the event that Customer terminates this Agreement, Customer shall owe MainNerve a pro rata payment for work in progress based upon the percentage of the work then completed plus the full amount of payment attributable to programming and materials already furnished by MainNerve, plus any amounts due as per the Work Order.

1.11.2. Breach by Customer. In the event Customer is delinquent in payment as set forth in the section entitled "Payment," MainNerve shall have the right to withhold further performance under this Agreement without notice, or terminate this Agreement, and in either case, Customer shall owe MainNerve a pro rata payment for work in progress based upon the percentage of the work then completed plus the full amount of payment attributable to materials already furnished by MainNerve, plus any remaining amounts due as per the Work Order. If the Customer breaches the terms of the Work Order, the Monthly Subscription Charges for the balance of the term shall, at the option of MainNerve, be accelerated and due and payable in full. In the event of a breach by Customer in any other of its obligations under this Agreement for which default is not cured within the required thirty (30) day period, MainNerve shall have the right to withhold further performance under this Agreement and Customer shall owe MainNerve a pro rata payment for work in progress based upon the percentage of the work then completed plus the full amount of payment attributable to programming and materials already furnished by MainNerve, plus any amounts due as per the Work Order.

1.11.3. Effect on Intellectual Property Rights. Notwithstanding any termination of the terms of this Agreement, the rights and licenses granted under the section entitled "Ownership Rights" hereof shall continue in effect in accordance with their terms; provided, however, MainNerve shall have no obligation to continue work until any amounts due under the section entitled "Breach by Customer" have been paid; but provided further, if Customer fails to cure any default in payment within thirty (30) days of the date due, any and all licenses and other rights granted hereunder to Customer in the Custom Content shall terminate.

1.12. Reimbursement of Expenses. Except as provided in the section entitled, "Independent Contractor," Customer shall pay MainNerve its actual out-of-pocket expenses as reasonably incurred by MainNerve solely in furtherance of its performance hereunder. MainNerve agrees to provide Customer with copies of all such receipts, ledgers, and other records for Customer or its accountants to verify the amount and nature of any such expenses.

1.13. Additional Work. The fees and charges for any changes, modifications, follow-on or additional work not described in the Work Order shall be pre-approved in writing by Customer.

1.14. Payment. Customer shall pay all fees and expenses properly owing to MainNerve hereunder within thirty (30) days from the date of MainNerve's invoices or by the date specified in the Work Order, whichever is sooner. Interest at the rate of twelve percent (12%), or the maximum amount allowable by law, per year shall be charged on all undisputed invoices unpaid after thirty (30) days.

1.15. Customer Content. "Customer Content" shall mean any materials provided by Customer for incorporation into the System, including, but not limited to, any data, images, programming, computer code, photographs, illustrations, graphics, audio clips, video clips, or text. Customer shall use reasonable efforts to deliver the Customer Content to MainNerve in an electronic file format specified and accessible by MainNerve (e.g., .txt, .gif, .jpg) or as otherwise specified in the Work Order. The cost to MainNerve of any Services required to convert or input Customer Content not set forth in the Work Order shall be charged to Customer as provided in section entitled "Additional Work." Upon MainNerve's written request, Customer shall deliver as soon as practicable all Customer Content to MainNerve as reasonably required by MainNerve.

1.16. Custom Content. "Custom Content" shall mean all designs, discoveries, inventions, products, computer programs, scripts, applets, procedures, improvements, developments, drawings, notes, documents, information, and materials made, conceived, or developed by MainNerve after the Effective Date on behalf of Customer in creating the System, and paid for in full by Customer. Custom Content is not a "work made for hire," as that term is defined in section 101 of Title 17 of the United States Code (the Copyright Act). Custom Content does not include any of the following: (a) Pre-existing software and other proprietary works developed or owned by MainNerve prior to the Effective Date; (b) Customer Content; and (c) Third-party software, as described in the section entitled "Third Party Resources" of this Agreement.

1.17. Content Rights.

1.17.1. Custom Content. Subject to the terms and conditions of this Agreement, MainNerve grants to Customer a non-exclusive, worldwide, perpetual, royalty-free license to use the Custom Content, and to reproduce, transmit, and distribute the Custom Content by electronic means and to create derivative works based thereon solely for Customer's own internal business purposes. The license does not permit Customer to rent,

lease, market, or sublicense the Custom Content to third parties. Customer agrees that it shall accurately reproduce all of MainNerve's copyright, trademark, and other proprietary rights notices on modified and/or derivative versions of the Custom Content. Nothing in this Agreement shall be construed as granting Customer any ownership interest in the Custom Content. All rights not expressly granted herein are reserved by MainNerve.

1.17.2. Pre-Existing Works. Customer's right, if any, to use any of MainNerve's pre-existing software and other proprietary works that are not included in the Custom Content shall be the subject of a separate license agreement between MainNerve and Customer.

1.17.3. Indemnity. Subject to the foregoing provisions, MainNerve agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Customer, its officers, directors, employees and agents from and against any liabilities, damages and costs (including reasonable attorneys fees and costs of defense) arising out of the death or bodily injury to any person or the destruction or damage to any property, to the extent caused, during the performance of Services under this Agreement, by the negligent acts, errors or omissions of MainNerve or anyone for whom MainNerve is legally responsible, subject to any limitations of liability contained in this Agreement. The Customer agrees, to the fullest extent permitted by law, to indemnify and hold harmless MainNerve, its officers, directors, employees and agents from any liabilities, damages and costs (including reasonable attorneys fees and costs of defense) to the extent caused by the negligent acts, errors or omissions of the Customer, the Customer's contractors, consultants or anyone for whom Customer is legally responsible.

1.17.4. Limitations on Indemnity. The rights granted to Customer under this Section 1.17 shall be Customer's sole and exclusive remedy for any alleged infringement of any patent, copyright, trademark, or other proprietary rights. MainNerve will have no liability if any alleged patent or copy-right infringement or claim thereof is based upon (i) the use of the Deliverables in connection or in combination with equipment, devices, software, or data not provided by MainNerve (if such infringement or claim could have been avoided by the use of the Deliverables with other equipment, devices, software or data), or (ii) use of other than the most current release of the Deliverables if such claim would have been avoided by use of such release.

1.18. Warranties of Customer. Customer warrants that it owns all right, title, and interest in and to, or has full and sufficient right and authority to use in the manner contemplated by this Agreement, the Customer Content and any other programming, materials, or data furnished by Customer to MainNerve in connection with MainNerve's performance of the Services called for by this Agreement.

1.19. Warranties of MainNerve. MainNerve warrants that:

1.19.1. Title. MainNerve has sufficient right, title, and interest in and to the Deliverables, exclusive of rights respecting programs, data, and materials identified as furnished to Customer by third-party vendors, including any third-party resources, to grant and convey the rights accorded to Customer under this Agreement; and

1.19.2. Scope. Upon Acceptance defined in the section entitled "Deliverables Acceptance" and for a period of three (3) months thereafter; the Deliverables shall provide the features, functions and produce results in material conformity with the specifications set forth in the Work Order. If, on the basis of written or documentary evidence submitted to MainNerve during such period, it is shown that the Deliverables are nonconforming, then, as the sole and exclusive remedy of Customer, MainNerve shall, at Customer's sole discretion and written request, either correct the nonconformity or return a pro rata portion of the payments made to MainNerve for such nonconforming Deliverables. If it is ultimately determined that no such nonconformity exists, or that the nonconformity (or any portion thereof) is owing to actions of Customer, Customer shall compensate MainNerve for its Services at MainNerve's established rates in establishing such conformity. All warranty claims not submitted by Customer to MainNerve during the three (3) month warranty period shall be deemed waived.

THE WARRANTIES PROVIDED IN SECTION 1.19 ARE SOLELY FOR THE BENEFIT OF CUSTOMER AND CUSTOMER SHALL HAVE NO AUTHORITY TO EXTEND SUCH WARRANTY TO ANY THIRD PARTY. THE WARRANTIES ARE CONTINGENT ON THE PROPER INSTALLATION AND USE OF THE DELIVERABLES ON THE DESIGNATED HARDWARE AND PROPER PERFORMANCE OF THIRD-PARTY SOFTWARE AND HARDWARE.

1.20. Disclaimer of Warranties. EXCEPT AS SPECIFICALLY SET FORTH IN SECTION ENTITLED "WARRANTIES OF MAINNERVE," CUSTOMER EXPRESSLY AGREES AND ACKNOWLEDGES THAT USE OF THE DELIVERABLES IS AT CUSTOMER'S SOLE RISK. THE DELIVERABLES ARE PROVIDED "AS IS," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, EXCEPT AS EXPRESSLY SET FORTH HEREIN. EXCEPT AS EXPRESSLY SET OUT HEREIN, MAINNERVE

DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. MAINNERVE DOES NOT WARRANT THAT THE DELIVERABLES WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE DELIVERABLES WILL BE COMPATIBLE WITH ANY PARTICULAR HARDWARE OR SOFTWARE PLATFORM, OR THAT THE ENCRYPTION METHOD, IF ANY, USED IN THE DELIVERABLE, IS COMPLETELY SECURE, OR THAT THE OPERATION OF THE DELIVERABLES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE DELIVERABLES WILL BE CORRECTED. EXCEPT AS SET FORTH HEREIN, THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE DELIVERABLES IS ASSUMED BY CUSTOMER. FURTHERMORE, MAINNERVE DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF THE DELIVERABLES IN TERMS OF ITS CORRECTNESS, ACCURACY, QUALITY, RELIABILITY, SECURITY, APPROPRIATENESS FOR A PARTICULAR TASK OR APPLICATION, CURRENTNESS, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY MAINNERVE OR MAINNERVE'S AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES GRANTED HEREIN.

1.21 Limitation of Liability. EXCEPT FOR CLAIMS BROUGHT UNDER THE SECTION ENTITLED "CONTENT RIGHTS," NEITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWILL OR BUSINESS REPUTATION, BUSINESS INTERRUPTION, LOSS OF DATA, OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF OR CONNECTED IN ANY WAY WITH THIS AGREEMENT, OR FOR ANY CLAIM BY ANY THIRD PARTY (INCLUDING FOR INTELLECTUAL PROPERTY INFRINGEMENT), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF EITHER PARTY FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO MAINNERVE HEREUNDER.

1.22. Loss of Data. In no event shall MainNerve be liable for loss of data or records of Customer that are stored at Customer's place of business, it being understood that Customer shall be responsible for ensuring proper and adequate back-up and storage procedures. Customer assumes full responsibility for maintaining and regularly updating back-ups of its data and records.

1.23. Customer Responsibilities. While MainNerve will complete its work in accordance with the estimated schedules and charges set out in the Work Order, timing and cost requirements may be subject to certain factors beyond MainNerve's control, including force majeure events and delays caused by third parties and Customer. MainNerve shall not be responsible for any delays or liability resulting from such factors. To facilitate prompt and efficient completion of the work, Customer and its personnel shall reasonably cooperate with MainNerve and its personnel in all material respects, including, without limitation, providing information as to Customer requirements, providing access to the facilities and equipment/hardware on which the Deliverables are to be installed, and providing access to all necessary information regarding Customer's systems and facilities. Customer shall be responsible for making, at its own expense, any changes or additions to Customer's current systems, software, and hardware that may be required to support operation of the Deliverables.

1.24. Indemnity. Customer will indemnify, defend and hold MainNerve harmless from any and all claims, demands, actions, liens, encumbrances, judgments, attorneys' fees, claims of employees, losses, injuries, and liabilities of whatever kind arising from or relating to MainNerve's performance under the Work Order or this Agreement or otherwise arising from or related to Customer's breach of any of its representations, obligations, duties, warranties, or covenants in this Agreement.

1.25. Maintenance and Support. MainNerve shall have no obligations of support or maintenance for the Deliverables beyond what may be set out in an attached Exhibit or separate agreement between the parties. MainNerve shall have no obligation to upgrade the Deliverables, unless such obligation is set out in the Work Order or an Exhibit to the Work Order or separate agreement between the parties.

1.26. Additional Value From Hiring. Customer acknowledges that MainNerve provides a valuable service by identifying and assigning personnel for Customer's work. Customer further acknowledges that Customer would receive substantial additional value, and MainNerve would be deprived of the benefits of its work force, if Customer were to directly hire MainNerve's personnel after they have been introduced to Customer by MainNerve. Without the prior written consent of MainNerve, Customer shall not recruit or solicit for employment any personnel of MainNerve until one (1) year after the termination of this Agreement, except as provided in a Direct Placement Agreement with MainNerve if executed.

1.27. Governing Law. This Agreement shall be governed and construed in all respects in accordance with the laws of the State of Texas.

1.28. Arbitration. Any controversy or claim arising out of or relating to this Agreement, including, without limitation, the interpretation or breach thereof, shall be submitted to a panel of three (3) arbitrators in Austin, TX, administered and adjudicated in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Such panel shall include only those persons with experience in the areas of information technology and software. Each party shall choose one (1) arbitrator, and the third arbitrator shall be chosen by the two (2) arbitrators selected by the parties. The award of the arbitrators shall be made in writing, with findings of fact and conclusions of law. The written decision shall be final, binding, and convertible to a court judgment in any appropriate jurisdiction. Notwithstanding the foregoing, this section shall not preclude either party from seeking temporary, provisional, or injunctive relief from any court. The parties shall share equally in such arbitration.

1.29. Non-Disclosure. At all times, both during the performance of the Project and after its completion, MainNerve will keep in strict confidence and will not disclose any confidential or proprietary information relating to the business of the Customer or of any client, customer, or business partner of the Customer, to any person or entity, or make use of any such confidential or proprietary information for MainNerve's own purposes or for the benefit of any person or entity, except as may be necessary in the ordinary course of creating the Deliverables or pursuant to a court order. MainNerve shall obtain confidentiality agreements from each of its employees and independent contractors performing a portion or all of the Deliverable.

1.30. Notices. All notices required or permitted hereunder shall be given in writing addressed to the respective parties as set forth herein, unless another address shall have been designated in writing, and shall be delivered by hand or by registered or certified mail, postage prepaid.

1.31. Press Releases/Client Roster. Each party agrees to work in good faith with the other party to develop mutually agreed upon public announcements and press releases announcing the relationship between the parties created by this Agreement. Each party may distribute such press releases and public announcements at such time as the parties mutually agree in writing on the content of such releases and announcements. All other press releases or public announcements regarding the relationship created by this Agreement or otherwise referencing the other party must be reviewed and approved in writing by the non-distributing party prior to distribution, such approval not to be unreasonably withheld. MainNerve may include Customer's name and/or logo on MainNerve's list of customers including, but not limited to, lists or announcements of customers on MainNerve's website.

1.32. Export. Customer agrees that it will not export or re-export the Deliverables without obtaining at its own risk and expense the appropriate licenses, permits, or authorizations from the United States Government or any other government. If Customer uses the Deliverables or provides access to the Deliverables from outside the United States of America, Customer is solely responsible for carrying out all customs formalities for the importation or exportation of the Deliverables and for the transit of such through any other countries and for compliance with all applicable laws, including without limitation export and import regulations of other countries.

1.33. General: This Agreement may be changed only by agreement in writing of authorized representatives of both parties. No text or information set forth on any other Work Order, preprinted form or document shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. The failure of a party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by that party in writing. Either party will be excused for any delay or failure in performance hereunder (except for the payment of money) caused by any occurrence or contingency beyond its reasonable control. The obligations and rights of the party so excused will be extended on a day-to-day basis for the time period equal to the period of such excusable delay.

REVISED APRIL 6, 2010