



MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (the "MSA") between DataBank Holdings Ltd., a Texas limited partnership with offices at 400 South Akard, Suite 100, Dallas, Texas 75202 ("DataBank") and the City of Temecula with offices at 41000 Main Street, Temecula, CA 92590 ("Customer") is made effective as of the date indicated below the Customer signature on the initial Order Form submitted by Customer and accepted by DataBank.

ARTICLE 1 – INTRODUCTION

1.1 *General.* This MSA sets forth the terms and conditions of DataBank's delivery and Customer's receipt of any or all of the Services provided by DataBank, including Professional Services. The specific Services to be provided under this MSA are identified in the Order Forms and/or Statements of Work submitted by Customer and accepted by DataBank and described in detail in the Order Forms and/or Statements of Work attached to each Order Form. The service levels DataBank will provide to Customer for each Service ordered, other than Professional Services, are defined in detail in the Service Level Agreements. Each Service Level Agreement and Order Form submitted, accepted and executed by both parties is hereby incorporated by reference into this MSA. This MSA is intended to cover any and all Services ordered by Customer and provided by DataBank. **Any terms set forth in this MSA which apply specifically to Services not ordered by Customer, will not apply to Customer.**

If Customer and DataBank or any of its affiliated entities are party to an agreement pursuant to which services are provided to Customer (the "Prior MSA"), then the parties hereby expressly agree that the Prior MSA is hereby terminated and superseded in its entirety by this MSA, and any Service Orders previously issued under the Prior MSA that are in effect are subject to the terms and conditions set forth in this MSA.

1.2 *Definitions.* Capitalized terms used and not elsewhere defined in this MSA, have the meanings given them in Schedule A to this MSA.

ARTICLE 2 – DELIVERY OF SERVICES AND TERM

2.1 *Delivery of Services.*

(a) *General.* By submitting an Order Form, Customer agrees to take and pay for, and, by accepting the Order Form, DataBank agrees to provide, the Services specified on the Order Form during the Initial Term and for any Renewal Term, as specified in Section 2.2(b). Billing for individual Services will begin as set out on the applicable Order Form. If no time is set out on an Order Form, billing will begin on the Service Commencement Date. The Services (including all data storage), shall be provided solely from within the continental United States and on computing and data storage devices residing therein. DataBank shall maintain accurate records of all fees billable to, and payments made by, Customer in a format that will reasonably permit audit by Customer for a period of no less than three (3) years from when a fee was incurred or a payment was made. The foregoing obligation of DataBank shall survive the termination of this MSA. For the term of this MSA, upon Customer's written request, DataBank shall provide Customer with a copy of its annual American Institute of Certified Public Accountants Service Organization Control (SOC) 1 type 2 report and SOC 2 type 2 report (for all Trust Services Principles) or applicable successor reports. In the event Customer gives DataBank written notice of a "litigation hold" or request under the California Public Records Act (Gov. Code § 7920.000 *et seq.*, "Public Records Act"), then as to all data identified in such notice or request that is stored on DataBank's equipment, DataBank shall, at no additional cost to Customer, isolate and preserve all such data pending receipt of further direction from the Customer.

2.2 *Term of Services.*

(a) *Commencement of Initial Term.* The term for each Service will commence on the Service Commencement Date and continue for the Initial Term.

(b) *Renewal Terms.* Following the Initial Term and unless otherwise terminated as provided for in this MSA or in writing at least ninety (90) days prior to the end of the Initial Term by either party that it has elected to terminate, each Service will be renewed for successive one (1) year terms (each, a "Renewal Term"). Except as otherwise expressly provided in this MSA, DataBank is obligated to provide and Customer is obligated to pay for each Service through its Initial Term and any Renewal Term. The termination of any Service will not affect Customer's obligations to pay for other Services.

(c) *Utility Rate Increases.* Customer acknowledges that DataBank may increase power charges at a rate proportional to utility rate increases during the Initial Term or any Renewal Term.

ARTICLE 3 – PAYMENT TERMS FOR FEES AND EXPENSES

3.1 *Fees and Expenses.* Customer will pay all fees and expenses due according to the prices and terms listed in the Order Forms. The

prices listed in the Order Forms will be increased by up to three percent (3%) per annum during the Initial Term indicated in the Order Forms and any Renewal Term thereof to cover increased costs associated with operating the DataBank Data Centers.

3.2 *Payment Terms.* On the Service Commencement Date for each Service, Customer will be billed an amount equal to all non-recurring charges indicated in the Order Form and the monthly recurring charges for the first month of the term. Monthly recurring charges for all other months will be billed in advance of the provision of Services. All other charges for Services received and expenses incurred during a month (e.g., time and materials billing fees, etc.) will be billed at the end of the month in which the Services were provided. Payment for all fees and expenses is due within thirty (30) days from the date of each DataBank invoice ("Due Date"). All payments will be made in the United States in U.S. dollars.

3.3 *Late Payments.* Any payment not received within by the Due Date will accrue interest at a rate of one and one half percent (1 ½%) per month, or the highest rate allowed by applicable law, whichever is lower.

3.4 *Billing Disputes.* If Customer in good faith disputes any portion of any DataBank invoice, Customer shall submit to DataBank, by the due date, full payment of the undisputed portion of the invoice and written documentation identifying and substantiating the disputed amount. If Customer does not report a dispute within sixty (60) days following the date of the applicable invoice pursuant to this Article 3.4, Customer shall have waived its right to dispute the invoice and all charges therein shall be deemed true and correct and due and owing. DataBank and Customer agree to use their respective commercially reasonable efforts to resolve any dispute within thirty (30) days after DataBank receives written notice of this dispute from Customer. Any disputed amounts resolved in favor of Customer shall be credited to Customer's account on the next invoice following resolution of the dispute. Any disputed amounts determined to be payable to DataBank shall be due within thirty (30) days of the resolution of the dispute.

3.5 *Taxes.* All fees charged by DataBank for Services are exclusive of all regulatory fees, surcharges, taxes and similar fees now in force or enacted in the future imposed on the transaction or the delivery of Services, all of which Customer will be responsible for and will pay in full, except for franchise taxes and taxes based on DataBank's net income.

ARTICLE 4 – CONFIDENTIAL INFORMATION; INTELLECTUAL PROPERTY OWNERSHIP; LICENSE GRANTS

4.1 *Confidential Information.*

(a) *Nondisclosure of Confidential Information.* Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products, and other information held in confidence by the other party ("*Confidential Information*"). Confidential Information will include all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should be considered confidential. Confidential Information will also include, but not be limited to, DataBank Technology and Customer Technology. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of, this MSA, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information. Each party also agrees that it will take reasonable precautions to protect the confidentiality of the other party's Confidential Information, at least as stringent as it takes to protect its own Confidential Information.

(b) *Exceptions.* Information will not be deemed Confidential Information under this MSA if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this MSA by the receiving party; or (iv) is independently developed by the receiving party. The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation of law or legal procedure, provided that it gives the disclosing party reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure unless (i) such disclosure is prohibited by law; or (ii) a government agency requests that no disclosure be made to the disclosing party. It is understood that Customer is subject to the California Public Records Act (Gov. Code §7920.000 et seq.). If a request under the California Public Records Act is made to view Databank's Confidential Information, Customer shall notify Databank of the request and the date that such records will be released to the requester unless Databank obtains a court order enjoining that disclosure. If Databank fails to obtain a court order enjoining that disclosure, Customer will release the requested information on the date specified.

4.2 *Intellectual Property.*

(a) *Ownership.* Except for the rights expressly granted in this MSA, this MSA does not transfer from DataBank to Customer any DataBank Technology, and all right, title and interest in and to DataBank Technology will remain solely with DataBank. Except for the rights expressly granted in this MSA, this MSA does not transfer from Customer to DataBank any Customer Technology, and all right, title and interest in and to Customer Technology will remain solely with Customer. DataBank and Customer each agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the other party.

(b) *General Skills and Knowledge.* Notwithstanding anything to the contrary in this MSA, DataBank will not be prohibited or enjoined at any time by Customer from utilizing any skills or knowledge of a general nature acquired during the course of providing the Services, including, without limitation, information publicly known or available or that could reasonably be acquired in similar work performed for another customer of DataBank.

ARTICLE 5 – DATABANK REPRESENTATIONS AND WARRANTIES

5.1 General.

(a) *Authority and Performance of DataBank.* DataBank represents and warrants that (i) it has the legal right and authority to enter into this MSA and perform its obligations under this MSA, (ii) the performance of its obligations and delivery of the Services to Customer will not violate any applicable U.S. laws or regulations, including OSHA requirements, or cause a breach of any agreements with any third parties; (iii) there is no outstanding litigation, arbitrated matter or other dispute to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this MSA; and (iv) to the best of its knowledge and belief, it is the lawful licensee or owner of the Services (excluding any of Customer's data therein) and has all the necessary rights in the Services to grant the use of the Services to Customer. In the event of a breach of the warranties set forth in this Section 5.1(a), Customer's remedy, in addition to any other remedies available at law or in equity, is termination pursuant to Article 10.

5.2 Service Warranties.

(a) *Service Level Warranty.* Subject to the exceptions set forth in the Service Level Agreement applicable to a specific Service, DataBank warrants that it will provide each Service at or above the service levels defined in the applicable Service Level Agreement (the "Service Level Warranty").

(b) *Remedies.* In the event that DataBank fails to provide a Service at the level required by the Service Level Warranty, Customer's only remedies are those set forth in the Service Level Agreement applicable to that Service (the "Remedies").

(c) *Customer Must Request Remedies.* In order to receive any of the Remedies, Customer must notify DataBank in writing within thirty (30) days from the time Customer becomes eligible to receive such Remedies. Failure to comply with this requirement will forfeit Customer's right to receive such Remedies.

(d) *Remedies Shall Not Be Cumulative; Maximum Remedy.* The Remedies set forth in each Service Level Agreement are not cumulative. The aggregate maximum Remedy for any and all failures to provide Services at the level required by a particular Service Level Agreement that occur in a single calendar month shall not exceed the maximum set forth in such Service Level Agreement.

(e) *Termination Option for Chronic Problems.* Customer may terminate a specific Service if the Customer experiences Chronic Problems (as defined in the applicable Service Level Agreement) with such Service. Customer must provide DataBank written notice of termination for Chronic Problems as specified in the Service Level Agreement and such termination will be effective as provided in the Service Level Agreement.

(f) THE SERVICE LEVEL WARRANTY SET FORTH IN THIS SECTION 5.2 DOES NOT APPLY TO (I) ANY PROFESSIONAL SERVICES; (II) ANY SUPPLEMENTAL SERVICES; OR (III) ANY SERVICES THAT EXPRESSLY EXCLUDE THIS SERVICE LEVEL WARRANTY (AS STATED IN THE SERVICE LEVEL AGREEMENTS FOR SUCH SERVICES).

(g) *System Maintenance.* Except for Emergency Maintenance, in the event DataBank determines that it is necessary to perform maintenance that has the potential for Service to be interrupted for the performance of system maintenance, DataBank will notify Customer ten (10) days prior to the performance of such maintenance and will schedule such maintenance during non-peak hours (midnight to 6:00 A.M. local time). In no event shall interruption for system maintenance if Customer is notified of in advance constitute a failure of performance by DataBank.

(h) *Software License.* Any third party software license provided to Customer is provided with "Restricted Rights" applicable to private and public licensees, including restrictions on use, duplication or disclosure by the U.S. Government as set forth in this MSA and as provided in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights at 48 CFR 52.227-19, as applicable.

(i) *Third Party Solutions.* Customer agrees and acknowledges that Customer may purchase, install or utilize certain third party applications, products, services, or software ("Third Party Solutions") through DataBank with the Services. These Third Party Solutions are provided to Customer "AS IS" and are governed by the third party's own terms of service (including any required payments) and privacy policies as set forth by that third party. DataBank does not endorse and is not responsible or liable for, directly or indirectly, and makes no representations or warranties and provides no indemnification for the services or features provided by any Third Party Solutions that Customer may choose to install, notwithstanding any language to the contrary in this MSA, any Order Form, Statements of Work or Service Level Agreement. DataBank is not liable for Customer's reliance on the privacy practices, data security processes or other policies of such Third Party Solutions. DATABANK DOES NOT MANAGE OR PROVIDE CUSTOMER SUPPORT OR ASSISTANCE WITH RESPECT TO THE THIRD PARTY SOLUTIONS, UNLESS PREVIOUSLY AGREED IN WRITING BY THE PARTIES, AND DATABANK IS NOT RESPONSIBLE OR LIABLE IN ANY WAY FOR ANY DAMAGES OR LOSSES ALLEGED OR CAUSED IN CONNECTION WITH THE USE OF, OR RELIANCE UPON, ANY THIRD PARTY SOLUTIONS.

(j) *Customer Solutions.* To the extent that Customer uses its own applications, products, services, software ("Customer Solutions") in conjunction with the Services, then DataBank shall not be responsible or liable in any way for any damage or loss alleged, or caused, in connection with the use of or reliance upon of any Customer Solutions.

5.3 *Service Performance Warranty.* DataBank warrants that it will perform the Services in a manner consistent with industry standards reasonably applicable to the performance thereof.

5.4 *No Other Warranty.* EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN ARTICLE 5, THE SERVICES ARE PROVIDED

ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. DATABANK DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. DATABANK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

5.5 Disclaimer of Actions Caused by or Under the Control of Third Parties. DATABANK DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM DATABANK'S NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH DATABANK WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, DATABANK CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, DATABANK DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

ARTICLE 6 – CUSTOMER REPRESENTATIONS, WARRANTIES AND OBLIGATIONS

6.1 *Representations and Warranties of Customer.*

(a) *Authority and Performance.* Customer represents and warrants that (i) it has the legal right and authority to enter into this MSA and perform its obligations under this MSA, and (ii) the performance of its obligations and use of the Services (by Customer, its customers and users) will not violate any applicable laws, regulations or the Acceptable Use Policy or unreasonably interfere with other DataBank customers' use of DataBank services.

(b) *Breach of Warranties.* In the event of any breach of any of the foregoing warranties, in addition to any other remedies available at law or in equity, DataBank will have the right, in its sole reasonable discretion, to suspend immediately any related Services if deemed reasonably necessary by DataBank to prevent any harm to DataBank and its business. DataBank will provide notice and opportunity to cure. Once cured, DataBank will promptly restore the Services.

6.2 Compliance with Law and Acceptable Use Policy. Customer agrees that it will use the Services only for lawful purposes and in accordance with this MSA. Customer will comply at all times with all applicable laws and regulations and the Acceptable Use Policy, as of the date of this MSA. The Acceptable Use Policy is incorporated into this MSA by reference. The Acceptable Use Policy contains restrictions on Customers and Customer's users' online conduct (including prohibitions against unsolicited commercial email). Customer agrees to comply with such restrictions in accordance with the Acceptable Use Policy. Customer acknowledges that DataBank exercises no control whatsoever over the content of the information passing through Customer's sites and that it is the sole responsibility of Customer to ensure that the information it and its users transmit and receive complies with all applicable laws and regulations and the Acceptable Use Policy.

6.3 Accesses and Security. Customer's access to the DataBank Data Centers will be limited solely to the Representatives identified by the Customer to DataBank in writing or entered by Customer into the DataBank Web Portal. If Customer is in breach under this MSA or otherwise not in compliance with the terms of this MSA and is notified of such breach by Databank, DataBank's prior written consent, which may be granted in DataBank's sole discretion, will be required for any such access.

6.4 Restrictions on Use of Services. Customer shall not, without the prior written consent of DataBank, which will not be unreasonably withheld, resell the Services to any third parties.

6.5 "Distributed Denial of Service Attack" ("DDoS Attack"). DataBank shall assign Internet Protocol ("IP") address space for Customer use during the term of this MSA. DataBank shall retain ownership of all such IP addresses at all times. Unless Customer has subscribed to DataBank DDoS Service, in the event Customer is subject to a DDoS Attack, it may be necessary to limit or stop all Customer data transfer including Null Routing of all inbound and outbound Customer internet traffic. If this occurs, DataBank will use commercially reasonable efforts to contact Customer. DataBank will attempt to limit the time in which Customer's data transfer is restricted, but this type of restriction will not be a breach of this MSA.

ARTICLE 7 – INSURANCE

7.1 DataBank Minimum Levels. DataBank agrees to keep in full force and effect during the term of this MSA: (i) comprehensive general liability insurance in an amount not less than \$2 million per occurrence for bodily injury and property damage, (ii) workers' compensation insurance including employer's liability insurance in an amount not less than \$1 million per occurrence, (iii) hired and non-owned automobile liability insurance in an amount not less than \$1 million per occurrence. Where not specifically prohibited by law, all policies shall contain waiver of subrogation. DataBank agrees that it will ensure and be solely responsible for ensuring that its contractors and subcontractors maintain insurance coverage at levels no less than those required by applicable law and customary in DataBank's and its agents' industries. The Customer shall be named as an additional insured in the commercial general, and excess liability policies which shall contain standard cross liability clauses. Databank shall cause the liability it assumed under this MSA to be specifically insured under the contractual liability section of the liability insurance policies. The liability policies shall be primary without right of contribution from any Indemnitee, and Databank waives all rights of subrogation with respect to said policies. Such policies shall require that Customer be given no less than thirty (30) calendar days prior written notice of any cancellation thereof or material change therein. Databank shall provide Customer with certificates of insurance and original endorsements, evidencing all of the above coverage, including all special requirements specifically noted above, and shall provide Customer with certificates of insurance evidencing renewal or substitution of such insurance thirty (30)

calendar days prior to the effective date of such renewal or substitution.

7.2 Customer Minimum Levels. In order to provide customers with physical access to facilities operated by DataBank and equipment owned by third parties, DataBank is required by its insurers to ensure that each DataBank customer maintains adequate insurance coverage. Customer agrees to keep in full force and effect during the term of this MSA: (i) comprehensive general liability insurance in an amount not less than \$2 million per occurrence for bodily injury and property damage, (ii) workers compensation insurance including employer's liability insurance in an amount not less than \$1 million per occurrence, and (iii) and "All Risk" property insurance covering all of Customer's equipment in an amount not less than its full replacement cost. If Customer is purchasing Managed or Cloud Services, Customer must additionally obtain professional liability insurance and standard form property insurance, including business interruption and electronic data processing media insurance, in each case in the amount not less than \$1 million per occurrence. Where not specifically prohibited by law, all policies shall contain waiver of subrogation. Customer shall notify DataBank in writing at least thirty (30) days in advance of cancellation or reduction in coverage. Customer agrees that it will ensure and be solely responsible for ensuring that its agents (including contractors and subcontractors) maintain insurance coverage at levels no less than those required by applicable law and customary in Customer's and its agents' industries. Databank acknowledges that Customer is a public entity and may self-insure or obtain insurance from a risk pool, which shall be acceptable coverage

7.3 Certificates of Insurance; Naming DataBank as an Additional Insured. Prior to any access of the DataBank Data Centers by any Representative or other agent or employee of Customer, Customer will (i) deliver to DataBank certificates of insurance which evidence the minimum levels of insurance set forth above; and (ii) cause its insurance providers to name DataBank as an additional insured and notify DataBank in writing of the effective date thereof.

ARTICLE 8—LIMITATIONS OF LIABILITY

8.1 Personal Injury. EACH REPRESENTATIVE AND ANY OTHER PERSON VISITING A DATABANK DATA CENTER DOES SO AT ITS OWN RISK. NEITHER PARTY ASSUMES LIABILITY WHATSOEVER FOR ANY HARM TO SUCH PERSONS RESULTING FROM ANY CAUSE OTHER THAN THE PARTY'S NEGLIGENCE OR WILLFUL MISCONDUCT.

8.2 Consequential Damages Waiver. EXCEPT FOR A BREACH OF SECTION 4.1 ("CONFIDENTIAL INFORMATION") OF THIS MSA, IN NO EVENT WILL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER FOR ANY TYPE OF INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

8.3 LIMITATION OF ACTUALS. DATABANK'S TOTAL LIABILITY FOR DAMAGES SHALL BE LIMITED TO THE TOTAL MONTHLY RECURRING CHARGES RECEIVED BY DATABANK FROM CUSTOMER OVER THE PRECEDING TWELVE (12) MONTHS FOR THE AFFECTED SERVICES.

ARTICLE 9—INDEMNIFICATION

9.1 Indemnification. DataBank shall indemnify, defend and hold Customer (including City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, officials, employees and volunteers) harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") resulting from or arising out of any claim, suit, action, or proceeding (each, an "Action") brought by any third party against Customer or its affiliates alleging (i) the infringement or misappropriation of any intellectual property right relating to the delivery or use of the Services (but excluding any infringement solely caused by Customer); (ii) tangible property or personal injury caused by the gross negligence or willful misconduct of DataBank.

9.1.1 Notice. Databank's indemnification obligations under this MSA shall be subject to (i) receiving prompt written notice of the existence of any Action; (ii) permitting the Customer to participate in the defense of any Action; and (iii) receiving full cooperation of the Customer in the defense thereof.

ARTICLE 10—TERMINATION

10.1 Termination by Customer For Cause. If DataBank fails to perform a particular Service under this MSA and does not remedy such failure within thirty (30) days following written notice from Customer (or such additional time which may be reasonably necessary to remedy such failure), Customer may terminate such Service without any further obligation to DataBank except for the payment of undisputed accrued but unpaid charges. If DataBank is unable to provide Service for thirty (30) consecutive days due to a Force Majeure event as defined in Section 11.1, Customer may terminate the affected Service without liability.

10.2 Termination by Customer for Convenience. Customer may, at any time and without cause, terminate any Service upon thirty (30) days written notice to DataBank, provided that Customer shall immediately pay DataBank (a) all charges for Services previously rendered, and (b) the monthly amount due for the terminated Services times the number of months remaining in the first 12 months of the applicable term, if any plus 50% of the monthly amount due for the terminated Services times the number of months remaining in the applicable term after month 12.

DataBank acknowledges that funding to pay for Services ordered under this MSA is subject to annual appropriations by the appropriate governing body and if adequate sums are not appropriated in any fiscal year to fund Customer's use of Services ordered hereunder, upon

delivering to DataBank documentation of the same satisfactory to DataBank in its reasonable discretion, Customer may terminate the affected Services upon no less than 45 days prior written notice. Such termination will not affect Customer's payment obligations for periods prior to such termination. Customer represents and warrants, however, that Customer will include sufficient funding to cover charges for all Services ordered under this MSA in each Customer budget submitted for approval, and will actively support the appropriation of such funding, during the term of each Order Form.

10.3 Termination by DataBank. DataBank may terminate this MSA or any Service with no further liability if (i) Customer fails to make payment as required under this MSA and such failure is uncorrected for thirty (30) calendar days following written notice from DataBank, or (ii) Customer fails to perform any other material obligation under this MSA and does not remedy such failure within thirty (30) days following written notice from DataBank or (iii) Customer files for bankruptcy or reorganization (voluntary or involuntary) (hereinafter collectively referred to as "*Customer Default*"). In the event of a Customer Default, DataBank shall have the right to: (i) suspend Service to Customer; (ii) cease processing or accepting orders for Service; and/or (iii) terminate this MSA or any Service. If DataBank terminates this MSA due to a Customer Default, Customer shall remain liable for all undisputed charges outlined in Section 10.2 herein. It is the express intent and understanding of the parties that, this MSA and Service Orders hereunder being one integrated agreement and not separate, severable contracts, Customer's rights to early termination of any Service is not a right to "reject", on an individual basis, any Service or any Service Order pursuant to federal bankruptcy laws.

10.4 Termination on Expiration of all Services. Either party may terminate this MSA, effective as of the date specified in written notice of termination provided to the other party, if all Services have been terminated in accordance with the procedures in Section 2.2(b) or if no Order Forms are in effect.

10.5 No Liability for Termination. Neither party will be liable to the other for any termination or expiration of any Service or this MSA in accordance with its terms.

10.6 Effect of MSA Termination. Upon the effective date of termination of this MSA:

(a) DataBank will immediately cease providing the Services;

(b) any and all undisputed payment obligations of Customer under this MSA for Services through any applicable term will immediately become due;

(c) within ten (10) days of such termination, each party will return all Confidential Information of the other party in its possession and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement;

(d) DataBank, at its sole discretion, may remove any Customer Equipment from any DataBank facility and return to Customer and Customer shall bear the cost of the removal and storage of the Equipment and risk of damage or loss related in any way to the removal of the Equipment.

10.7. Termination Assistance. Notwithstanding the provisions of Section 10.6, upon the termination of this MSA for any reason, DataBank will provide to Customer such termination assistance relating to the Services, at DataBank's then current standard rates, as may be reasonably requested in writing by Customer. DataBank's obligation to provide assistance pursuant to this Section 10.7 is limited to a period of forty-five (45) days (the "*Assistance Period*"). DataBank will provide to Customer and/or to the consultant selected by Customer ("*Successor Consultant*"), at DataBank's then current standard rates, assistance reasonably requested by Customer to effect the orderly transition of the Services, in whole or in part, to Customer or to Successor Consultant ("*Transition Services*") following the termination of this MSA, in whole or in part. All applicable terms and conditions of this MSA shall apply to the Transition Services. This Section shall survive the termination of this MSA.

10.8 Survival. The following provisions will survive any expiration or termination of this MSA: Articles 3, 8, 9, 10 and 11 (excluding Section 11.2) and Sections 4.1, 4.2, and 5.4.

ARTICLE 11 – MISCELLANEOUS PROVISIONS

11.1 Force Majeure. Except for the obligation to make payments, neither party will be liable for any failure or delay in its performance under this MSA due to any cause beyond its reasonable control, including, but not limited to, acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the actions or inactions of DataBank) (each a "*Force Majeure Event*"), provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.

11.2 No Lease; MSA Subordinate to Master Lease. This MSA is a services agreement and is not intended to and will not constitute a lease of any real property. Customer acknowledges and agrees that (i) it has been granted only a license to use the DataBank Data Centers in accordance with this MSA; (ii) Customer has not been granted any real property interest in the DataBank Data Centers; and (ii) Customer has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations, or ordinances.

11.3 Marketing. During the term of this MSA DataBank shall not publicly refer to Customer orally or in writing without the prior written

consent of Customer, however, Customer agrees that DataBank may refer to Customer in communications with DataBank's bankers, accountants, and other service providers to the extent reasonably necessary.

11.4 *Government Regulations.* Customer will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this MSA without first complying with all export control laws and regulations which may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business.

11.5 *No Third Party Beneficiaries.* DataBank and Customer agree that, except as otherwise expressly provided in this MSA, there shall be no third party beneficiaries to this MSA, including but not limited to the insurance providers for either party or the customers of Customer.

11.6 *Governing Law; Dispute Resolution.* This MSA and the rights and obligations of the parties created hereby will be governed by and construed in accordance with the internal laws of the State of California with venue in with venue in Los Angeles County, California, without regard to its conflict of law rules and specifically excluding from application to this MSA that law known as the United Nations Convention on the International Sale of Goods. The parties will reasonably endeavor to settle amicably by mutual discussions any disputes, differences, or claims whatsoever related to this MSA.

11.7 *Severability.* In the event any provision of this MSA is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of this MSA will remain in full force and effect.

11.8 *Waiver.* The waiver of any breach or default of this MSA, or the failure to exercise any right provided for in this MSA, will not constitute a waiver of any subsequent breach, default or right, and will not act to amend or negate the rights of the waiving or non-exercising party.

11.9 *Assignment.* Customer may assign this MSA in whole as part of a corporate reorganization, consolidation, merger, sale of all or substantially all of its assets, or transaction or series of related transactions that results in the transfer of fifty percent (50%) or more of the outstanding voting power of Customer, provided that any such assignee agrees to be bound by the terms and conditions of this MSA. Customer may not otherwise assign its rights or delegate its duties under this MSA either in whole or in part without the prior written consent of DataBank, and any attempted assignment or delegation without such consent will be void. DataBank may assign this MSA in whole or part, including through the assignment of one or more Order Forms to its Local Entities that own and/or operate facilities in various locations to provide Services specified on such Order Form or Order Forms. Such Local Entities will perform the Services in accordance with, and subject to, the terms and conditions of this MSA and the applicable Order Form. DataBank may act as agent of any Local Entity, and in such capacity would continue to invoice Customer for Services rendered, manage Order Form acceptance and Service delivery hereunder and may exercise and enforce other rights on behalf of such Local Entities. In addition, DataBank may delegate the performance of certain Services to third parties, including Local Entities provided that DataBank will remain responsible for the obligations to provide such Services in accordance with the applicable Order Form and this MSA.

11.10 This MSA will bind and inure to the benefit of each party's successors and permitted assigns.

11.11 *Notice.* Any notice or communication required or permitted to be given under this MSA may be delivered by hand, deposited with an overnight courier, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party as listed on the Order Form or at such other address as may hereafter be furnished in writing by either party to the other party. Such notice will be deemed to have been given as of the date it is delivered, mailed, or sent, whichever is earlier.

11.12 *Relationship of Parties.* DataBank and Customer are independent contractors and this MSA will not establish any relationship of partnership, joint venture, employment, franchise, fiduciary, or agency between DataBank and Customer. Neither DataBank nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided in this MSA.

11.13 *Article and Section Headings; Pronouns; Plural and Singular.* The article and section headings in this MSA are for reference purposes only and shall not affect the meaning or interpretation of this MSA. References in this MSA to a designated "Article" or "Section" refer to an Article or Section of this MSA unless otherwise specifically indicated. All pronouns used in this MSA shall be construed as including both genders and the neuter. All capitalized defined terms used in this MSA are equally applicable to their singular and plural forms.

11.14 *Entire Agreement.* This MSA, including schedules and all documents incorporated into this MSA by reference, constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede all of the prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter of this MSA. Any additional or different terms in any Order Form or other response by Customer shall be deemed objected to by DataBank without need of further notice of objection, and shall be of no effect or in any way binding upon DataBank.

11.15 *Counterparts and Originals.* This MSA may be executed in counterparts, which together shall constitute a single agreement. Delivery by telephonic facsimile or electronic mail transmission of a signed counterpart of this MSA shall be effective as delivery of a manually signed counterpart. Once signed, any reproduction of this MSA made by reliable means (e.g., photocopy, facsimile) is considered an original.

11.16 *Amendments.* This MSA may be amended or changed only by a written document signed by authorized representatives of DataBank and Customer in accordance with this Section 11.16.

11.17 Databank shall keep itself informed of all applicable federal, state and local laws, ordinances, codes, regulations and requirements applicable to DataBank's performance of its services pursuant to this MSA. Databank shall, at all times, observe and comply with all such laws and regulations, including, but not limited to the Americans with Disabilities Act, the Stored Communications Act, 18 U.S.C. Section 2701, *et seq.*, California Civil Code Sections 1798.80 through 1798.84, and the California Consumer Privacy Act, Civil Code Section 1798.100, *et seq.*, if and to the extent applicable. Customer, and its officers and employees, shall not be liable at law or in equity by reason of the failure of Databank to comply with this paragraph.

11.18 *Interpretation of Conflicting Terms.* In the event of a conflict between or among the terms in this MSA, the Service Level Agreements, the Order Forms, Statements of Work and any other document made a part hereof, the documents shall control in the following order: the Order Form with the latest date, Statements of Work, the Service Level Agreements, this MSA and other documents.

Authorized representatives of Customer and DataBank have read the foregoing Master Services Agreement and all documents incorporated into the Master Services Agreement and agree and accept such terms effective as of the date first referenced above.

CUSTOMER:


Signature: _____

Print Name: _____

Title: _____

Date: _____

DATABANK:

Signature:  _____

Print Name: Daniel Yamaysh _____

Title: General Counsel _____

Date: November 5, 2023 _____

This Master Services Agreement incorporates the following documents when applicable:

- Service Orders
- Service Level Agreements
- Statements of Work
- Schedule A - Definitions

DATA BANK

MASTER SERVICES AGREEMENT SCHEDULE A—DEFINITIONS

The following defined terms are equally applicable in their singular and plural forms:

a) "Acceptable Use Policy" means the DataBank general Acceptable Use Policy, as of the effective date of the MSA, governing Customer's use of Services, including, but not limited to, online conduct, and the obligations of Customer and its Representatives in the DataBank Data Centers and available at <http://www.databank.com/legal/aup>.

b) "Customer Equipment" or "Equipment" means computer and telecommunications equipment, or other such supporting equipment owned by Customer and placed in DataBank Data Center.

c) "Customer Technology" means Customer's proprietary technology, including Customer's Internet operations design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by Customer or licensed to Customer from a third party) and also including any derivatives, improvements, enhancements or extensions of Customer Technology conceived, reduced to practice, or developed during the term of this MSA by Customer.

d) "DataBank Data Center" means any of the facilities used by DataBank to provide the Services.

e) "DataBank Technology" means DataBank's proprietary technology, including DataBank Services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by DataBank or licensed to DataBank from a third party) and also including any derivatives, improvements, enhancements or extensions of DataBank Technology conceived, reduced to practice, or developed during the term of this MSA by either party that are not uniquely applicable to Customer or that have general applicability in the art.

f) "Distributed Denial of Service Attack" means a cyber-attack in which the perpetrator seeks to make a machine or network resource unavailable to its intended users by disrupting services of a host connected to the internet.

g) "Emergency Maintenance" is maintenance activities that are unscheduled to correct an emergency needed to prevent injury, loss of property, or return an asset to services in DataBank's sole discretion.

h) "Initial Term" means the minimum term for which DataBank will provide the Services to Customer, as indicated on the Order Forms.

i) "Order Form" means any of the forms specifying the Services, and the term and prices of such Services, to be provided by DataBank to Customer that are submitted by Customer and accepted by DataBank, including any Statement of Work attached thereto.

j) "Null Routing" means the act of implementing a command on a firewall or network equipment to drop packets originating or terminating to a specific IP address or range of addresses.

k) "Professional Services" means any professional or consulting service provided by DataBank to Customer as more fully described in a Statement of Work.

l) "Representatives" mean the individuals identified in writing or via the DataBank Portal that contain the names and contact information (e.g. email and telephone numbers) of Customer and the individuals authorized by Customer to enter the DataBank Data Centers.

m) "Renewal Term" means any service term following the Initial Term, as specified in Section 2.2 of the MSA.

n) "Representatives" mean the individuals identified in writing or via the DataBank Portal that contain the names and contact information (e.g. email and telephone numbers) of Customer and the individuals authorized by Customer to enter the DataBank Data Centers.

o) "Services" means the specific services provided by DataBank as described on the Order Forms.

p) "Service Commencement Date" means the date Service is first made available to Customer for use and Customer has not, within five (5) business days of such delivery, notified DataBank of its non-acceptance of the Service for reasons caused by DataBank.

q) "Service Level Agreement" is the detailed definition of service levels that DataBank will provide to Customer for a specific Service.

r) "Service Level Warranty" is described and defined in Section 5.2 of the MSA.

s) "Statement of Work" means the detailed descriptions of the Professional Services attached to Order Forms.

The terms "written" and "in writing" mean anything reduced to a tangible form by a party, including a printed, photocopy, facsimile or handwritten document but excluding email or other electronic format.