

# OUTSOURCING AGREEMENT

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This Outsourcing Agreement (this "**Agreement**") is entered into as of [EFFECTIVE DATE] (the "**Effective Date**") by and between:

[CUSTOMER LEGAL NAME], a [STATE] [ENTITY TYPE, e.g. corporation] with its principal place of business at [CUSTOMER ADDRESS] ("**Customer**"); and

[SUPPLIER LEGAL NAME], a [STATE] [ENTITY TYPE] with its principal place of business at [SUPPLIER ADDRESS] ("**Supplier**").

Customer and Supplier are each a "**Party**" and together the "**Parties**."

**Recitals.** Customer wishes to outsource the performance of certain business processes and functions to Supplier, and Supplier has the personnel, systems, and expertise to perform those functions on an ongoing basis. The Parties wish to set out the scope of the outsourced services, the service levels that govern them, and the commercial and legal terms of the relationship. In consideration of the mutual promises below, the Parties agree as follows.

## 1. Scope of Outsourced Services

**1.1 Services.** Supplier will perform the business process and operational services described in **Schedule A (Statement of Services)** (the "**Services**") in a professional and workmanlike manner consistent with generally accepted industry standards and the requirements of this Agreement.

**1.2 Service descriptions.** Schedule A will describe, for each outsourced function: (a) the activities Supplier performs; (b) the outputs or deliverables; (c) operating hours and coverage windows; (d) volumes or capacity assumptions; and (e) any Customer-retained responsibilities. Functions not described in Schedule A are outside the scope of this Agreement.

**1.3 Transition.** The Parties will complete the transition of the outsourced functions to Supplier in accordance with **Schedule B (Transition Plan)**, including knowledge transfer, system access, and parallel-run periods. Each Party will assign a transition lead and cooperate in good faith to meet the transition milestones.

**1.4 Continuous improvement.** Supplier will review the Services periodically and propose reasonable improvements in efficiency, quality, and cost. The Parties will implement agreed improvements through the change procedure in Section 8.

**1.5 Customer dependencies.** Customer will provide the access, information, systems, approvals, and cooperation reasonably required for Supplier to perform. Supplier is not responsible for any failure to meet a service level or deadline to the extent caused by Customer's failure to meet a dependency, provided Supplier gives prompt notice of the dependency failure.

## 2. Service Levels and Performance

2.1 **Service levels.** Supplier will perform the Services in accordance with the service levels, key performance indicators, and measurement methods set out in **Schedule C (Service Levels)** (each a "**Service Level**").

2.2 **Measurement and reporting.** Supplier will measure its performance against each Service Level and provide Customer a written performance report at the intervals stated in Schedule C, together with reasonable supporting data.

2.3 **Service credits.** If Supplier fails to meet a Service Level, Customer is entitled to the service credits stated in Schedule C. Service credits are the Parties' agreed mechanism to incentivize performance and are not Customer's exclusive remedy for a Service Level failure that also constitutes a material breach.

2.4 **Root-cause and remediation.** For any material or repeated Service Level failure, Supplier will, at no additional charge, investigate the root cause, give Customer a written corrective action plan within **[NUMBER, e.g. 10]** business days, and implement the plan diligently.

2.5 **Critical failure.** Repeated failure to meet the same Service Level in **[NUMBER, e.g. 3]** consecutive measurement periods is a material breach that Customer may terminate for under Section 9 if not cured.

### 3. Personnel and Subcontracting

3.1 **Supplier personnel.** Supplier will assign personnel with the skills and experience necessary to perform the Services, and will be responsible for their training, supervision, compensation, and compliance with this Agreement.

3.2 **Key personnel.** The individuals identified as key personnel in Schedule A will be dedicated to the Services as stated. Supplier will not reassign key personnel without Customer's prior written consent, except due to resignation, termination, illness, or other cause beyond Supplier's reasonable control, and will provide a qualified replacement.

3.3 **Removal.** On Customer's reasonable written request, Supplier will promptly remove from the account any individual whose performance or conduct is unsatisfactory, and will provide a qualified replacement.

3.4 **Subcontracting.** Supplier may subcontract portions of the Services only with Customer's prior written consent, which will not be unreasonably withheld. Supplier remains fully responsible for the acts and omissions of its subcontractors and for the Services as if performed by Supplier directly.

3.5 **No employment relationship.** Supplier personnel are employees or contractors of Supplier and not of Customer. Supplier is solely responsible for all wages, benefits, taxes, and withholdings relating to its personnel.

### 4. Charges and Payment

4.1 **Charges.** Customer will pay the charges stated in **Schedule D (Charges)**, which may include fixed fees, per-transaction or per-unit fees, or a combination. Unless Schedule D says otherwise, charges are stated in **[CURRENCY]** and are exclusive of taxes.

4.2 **Invoicing.** Supplier will invoice Customer **[MONTHLY / AS STATED IN SCHEDULE D]**. Customer will pay each undisputed invoice within **[NUMBER, e.g. 30]** days of the invoice date.

4.3 **Disputed charges.** Customer will pay all undisputed amounts on time and will notify Supplier in writing of any disputed amount within **[NUMBER]** days of the invoice date, describing the basis. The Parties will resolve disputed amounts in good faith.

4.4 **Late payment.** Undisputed amounts not paid when due accrue interest at the lesser of **[e.g. 1.5%]** per month or the maximum rate permitted by applicable law, from the due date until paid.

**4.5 Taxes.** Customer is responsible for all sales, use, value-added, and similar taxes arising from the Services, except taxes based on Supplier's net income.

**4.6 Benchmarking.** No more than [NUMBER, e.g. once] per [12]-month period, Customer may engage a mutually acceptable independent benchmarker to compare the charges and Service Levels against the market. The Parties will negotiate in good faith to adjust the charges based on the benchmarking results.

## 5. Data Protection and Security

**5.1 Customer data.** As between the Parties, Customer owns all data Customer provides to Supplier and all data Supplier generates on Customer's behalf in performing the Services ("**Customer Data**"). Supplier may use Customer Data only to perform the Services.

**5.2 Security program.** Supplier will maintain a written information security program with administrative, technical, and physical safeguards appropriate to the nature of the Customer Data and consistent with **Schedule E (Security Requirements)** and applicable law.

**5.3 Data protection compliance.** Each Party will comply with the data protection and privacy laws applicable to it. Where Supplier processes personal data on Customer's behalf, the Parties will execute the data processing terms in Schedule E and Supplier will process such data only on Customer's documented instructions.

**5.4 Security incidents.** Supplier will notify Customer without undue delay, and in any event within the period required by applicable law or Schedule E, after becoming aware of any breach of security affecting Customer Data, and will reasonably cooperate in investigation and remediation.

**5.5 Return of data.** On termination or Customer's request, Supplier will return Customer Data in a commercially reasonable format and securely delete remaining copies, except for copies retained in routine backups or as required by law.

## 6. Confidentiality

**6.1 Definition.** "**Confidential Information**" means non-public information disclosed by one Party to the other that is marked confidential or that a reasonable person would understand to be confidential given its nature and the circumstances, including business processes, pricing, customer data, and technical information.

**6.2 Obligations.** The receiving Party will use Confidential Information only to perform under this Agreement, protect it with at least reasonable care, and disclose it only to personnel and advisors who need it and are bound by comparable confidentiality obligations.

**6.3 Exclusions.** Confidentiality obligations do not apply to information that is or becomes public through no fault of the receiving Party, was rightfully known before disclosure, is rightfully obtained from a third party without restriction, or is independently developed without use of the Confidential Information.

**6.4 Compelled disclosure.** The receiving Party may disclose Confidential Information to the extent required by law or court order, provided it gives prompt written notice where legally permitted and reasonable cooperation to seek protective treatment.

## 7. Intellectual Property

**7.1 Pre-existing IP.** Each Party retains all right, title, and interest in intellectual property it owned or developed before this Agreement or independently of it ("**Background IP**").

**7.2 Work product.** Subject to Customer's payment of the applicable charges, Supplier assigns to Customer all right, title, and interest in deliverables and work product created specifically for Customer under this Agreement,

excluding Supplier's Background IP and Tools.

**7.3 Supplier tools.** Supplier retains ownership of its methodologies, know-how, software, and general-purpose tools and components ("**Tools**"). To the extent any Tools are embedded in a deliverable, Supplier grants Customer a non-exclusive, perpetual, worldwide, royalty-free license to use those Tools solely as part of that deliverable.

**7.4 Customer materials.** Customer grants Supplier a non-exclusive license to use Customer's materials and systems solely as necessary to perform the Services during the term.

## 8. Governance and Change Management

**8.1 Governance.** Each Party will appoint a relationship manager who will meet at the intervals stated in Schedule A to review performance, resolve issues, and manage the relationship.

**8.2 Change procedure.** Either Party may request a change to the Services. A change takes effect only when both Parties sign a written change order describing the change and its impact on charges, Service Levels, and schedule. Supplier is not obligated to perform out-of-scope work until a change order is signed.

**8.3 Forecasts and volumes.** Customer will provide reasonable volume forecasts as stated in Schedule A. Material changes in actual volumes outside the assumptions in Schedule A may be addressed through the change procedure.

**8.4 Records and audit.** Supplier will maintain accurate records relating to the Services and, on reasonable prior notice and no more than **[NUMBER, e.g. once]** per year, allow Customer or its representatives to audit those records and Supplier's compliance with this Agreement, subject to Supplier's confidentiality and security requirements.

## 9. Term and Termination

**9.1 Term.** This Agreement begins on the Effective Date and continues for an initial term of **[NUMBER]** years, after which it renews for successive **[NUMBER]**-year periods unless either Party gives written notice of non-renewal at least **[NUMBER, e.g. 90]** days before the end of the then-current term.

**9.2 Termination for cause.** Either Party may terminate this Agreement on written notice if the other Party materially breaches and fails to cure within **[NUMBER, e.g. 30]** days after written notice describing the breach.

**9.3 Termination for convenience.** Customer may terminate this Agreement for convenience on **[NUMBER, e.g. 90]** days' prior written notice, subject to any wind-down or early-termination charges stated in Schedule D.

**9.4 Termination assistance.** On expiration or termination, Supplier will, for up to **[NUMBER, e.g. 6]** months and at the rates in Schedule D, provide reasonable assistance to transition the Services back to Customer or to a successor supplier, including knowledge transfer and orderly handover of Customer Data.

**9.5 Effect of termination.** On termination, Customer will pay for Services performed through the effective date. Sections 5, 6, 7, 9.4, 9.5, 10, 11, and 12, and any others that by their nature should survive, survive termination.

## 10. Representations and Warranties

**10.1 Mutual.** Each Party represents that it has the authority to enter into this Agreement and that doing so does not violate any other agreement binding on it.

**10.2 Supplier.** Supplier represents that it will perform the Services in a professional and workmanlike manner consistent with industry standards and in compliance with all laws applicable to its performance.

10.3 **Disclaimer.** Except as expressly stated in this Agreement, neither Party makes any warranty, and each disclaims all implied warranties, including merchantability and fitness for a particular purpose, to the maximum extent permitted by law.

## 11. Indemnification and Limitation of Liability

11.1 **Indemnification.** Each Party will defend the other against third-party claims arising from the indemnifying Party's breach of this Agreement, negligence, or willful misconduct, and will indemnify the other for resulting damages finally awarded or agreed in settlement, subject to Section 11.3.

11.2 **Procedure.** The indemnified Party will give prompt written notice, allow the indemnifying Party to control the defense, and provide reasonable cooperation. The indemnifying Party may not settle in a way that imposes liability or admission on the indemnified Party without its consent.

11.3 **Limitation of liability.** Except for the excluded matters in Section 11.4, neither Party is liable for indirect, incidental, special, consequential, or punitive damages, and each Party's total aggregate liability will not exceed the total charges paid or payable in the [NUMBER, e.g. 12] months before the event giving rise to the liability.

11.4 **Exclusions.** The limitations in Section 11.3 do not apply to a Party's indemnification obligations, breach of confidentiality or data protection obligations, a Party's gross negligence or willful misconduct, or amounts owed for Services performed.

## 12. General Provisions

12.1 **Independent contractors.** The Parties are independent contractors. Nothing creates a partnership, joint venture, agency, or employment relationship.

12.2 **Governing law and venue.** This Agreement is governed by the laws of the State of [STATE], without regard to its conflict-of-laws rules. The Parties submit to the exclusive jurisdiction of the state and federal courts located in [COUNTY, STATE].

12.3 **Dispute resolution.** Before filing suit, the Parties will attempt in good faith to resolve any dispute through senior-management discussion within [NUMBER] days of written notice. [OPTIONAL: arbitration clause — discuss with counsel.]

12.4 **Assignment.** Neither Party may assign this Agreement without the other's prior written consent, except to a successor in connection with a merger, acquisition, or sale of substantially all assets, on written notice.

12.5 **Notices.** Notices must be in writing and sent to the addresses above (or as updated in writing) and are effective on receipt.

12.6 **Force majeure.** Neither Party is liable for delay or failure caused by events beyond its reasonable control, provided it gives prompt notice and uses reasonable efforts to mitigate.

12.7 **Entire agreement; amendment.** This Agreement, together with its Schedules and change orders, is the entire agreement between the Parties on its subject and supersedes prior discussions. It may be amended only by a writing signed by both Parties.

12.8 **Severability and waiver.** If any provision is unenforceable, the rest remains in effect. A Party's failure to enforce a provision is not a waiver.

12.9 **Counterparts and electronic signature.** This Agreement may be signed in counterparts and by electronic signature, each of which is an original and all of which together form one agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

**CUSTOMER**

**SUPPLIER**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed name: **[NAME]**

Printed name: **[NAME]**

Title: **[TITLE]**

Title: **[TITLE]**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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