

TAP Solutions & Services Master Services Agreement (MSA)



TAP Solutions & Services Master Services Agreement

This TAP Solutions & Services Agreement (“**Agreement**”), dated _____ is by and between TAP Innovations, Inc, a Texas corporation (hereinafter “**TAP**”), and _____, a _____ (enter State of incorporation here) (hereinafter “**Client**”). Each of TAP and Client may be referred to as a “**Party**” and they may be collectively referred to as the “**Parties**”.

This document combines the TAP Innovations, LLC. Consulting Services Agreement (**Part One**) for contracts pertaining to our Staffing Division, the Software Application Terms & Conditions (**Part Two**), covering software application solutions and services offered by TAP Innovations, LLC and the Data Processing Agreement (**Part Three**) for TAP Innovations, LLC data services. Clients or Signing Parties should skip the appropriate Part(s) if not engaging TAP with those services.

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TAP Solutions & Services Master Services Agreement (MSA)

PART ONE: CONSULTING SERVICES AGREEMENT

TAP is in the business of providing, and Client wishes to obtain, resources to perform a variety of technical and other services, which services shall be more particularly described in one or more resource 'statements of work-SOW' agreed to and executed by both Parties (each, an "**Exhibit A-SOW-SOW**"). At Client's request, TAP agrees to provide Client information technology or other resources to perform certain types of designated services from time to time during the term of this Agreement, and subject to the terms and conditions of this Agreement set forth below and the applicable Exhibits A-SOW-SOW. Here are the key section links below:

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1. **Services.** To obtain TAP's services for a particular need (the "**Services**"), the Parties will complete an Exhibit A-SOW containing (i) detailed information of Client's needs, (ii) the estimated time required to complete the Services, (iii) the fees to be paid by Client to TAP in conjunction with the Services and (iv) such other pertinent information as the Parties may deem appropriate. An Exhibit A-SOW is effective when accepted and executed by authorized representatives of both Parties herein. To the extent any conflict exists between this Agreement and in Exhibit A-SOW, the Agreement shall control. The Services shall be carried out by resources of TAP (or resources of third parties under contract with TAP to furnish such resources) ("**Assigned Resources**"), whose daily activities will be directed and controlled by Client. Client may, at any time, request the replacement of any of the Assigned Resources who materially fails to meet Client's reasonable performance and capability requirements, and TAP will use commercially reasonable efforts to promptly meet such a request. [Return to Home Page](#)
2. **Client Resources.** Client shall provide, at Client's expense, suitable workspace, equipment, hardware, software, information, and site and system access and facilities as are reasonably necessary to enable Assigned Resources to perform the Services, in addition to any resources that are specified in the applicable Exhibit. [Return to Home Page](#)
3. **Scheduling.** TAP will use reasonable efforts to accommodate work schedule requests of Client. Should any personnel of TAP be unable to perform scheduled services because of illness, resignation, or other causes beyond TAP's reasonable control, TAP will attempt to replace such personnel within a reasonable time, but TAP shall not be liable for failure if it is unable to do so, giving due regard to its other commitments and priorities. [Return to Home Page](#)
4. **TAP Fee.** TAP will invoice Client every thirty (30) days for TAP's fees and expenses attributable to Services provided to Client during the immediately preceding 30-day period. The fees invoiced by TAP for Services rendered shall be as provided in each Exhibit A-SOW (collectively, the "**Fees**"). Client's approval of Assigned Resource's time record, whether in paper or electronic form, shall constitute Client's acceptance of the Services provided by Assigned Resources and its consent to pay Fees for such Services. TAP will maintain such time records reasonably sufficient to substantiate TAP's Fees. Client will reimburse TAP for any actual out-of-pocket expenses incurred by TAP and its representatives in their performance of Services, as agreed to and approved by Client in writing (the "**Expenses**"). Any acquisition of property, such as software updates or new hardware, which are necessary for performance of services hereunder, shall be set forth on the Work Order(s) and shall be Client's sole responsibility. The parties acknowledge and agree that Client ordinarily will make these acquisitions directly. However, if Client directs TAP in writing to make such acquisitions and TAP agrees to do so, TAP may invoice Client for such acquisitions immediately upon incurring the expense. Any such acquisitions shall become the property of Client as soon as Client pays for them. Except as otherwise agreed in this Agreement or the applicable Work Order, TAP shall be responsible for all normal costs and expenses incident to the performance of the work, including all costs incurred by TAP to do business. [Return to Home Page](#)
5. **Payment Terms.** Client represents and warrants to TAP that it has the financial ability to pay any Fees and Expenses incurred under this Agreement. Client will pay the Fees and Expenses within thirty (30) days after the date of invoice unless otherwise stated in the Order Form. Any amount remaining unpaid after such thirty (30) day period shall be considered delinquent. Client's failure to pay any and all amounts invoiced within sixty (60) days of invoice date shall constitute a material breach of this Agreement by Client and TAP may, in addition to any other available remedies, immediately remove its Assigned Resources from the Client's location, suspend performance of the Services or terminate the applicable Exhibit A-SOW or this Agreement and all Exhibits A-SOW. TAP may charge interest from the date a payment is past due until the date a payment is made on any Fees or other amounts that are not timely paid by Client at a rate equal to the lesser of: (a) five percent per month; or (b) the maximum interest rate permitted by applicable law. [Return to Home Page](#)
6. **Compensation of TAP's Personnel.** TAP shall bear sole responsibility for payment of compensation to its personnel. TAP shall pay and report, for all personnel assigned to Client's work, federal and state income tax withholding, social security taxes, and unemployment insurance applicable to such personnel as employees of TAP. TAP shall bear sole responsibility for any health or disability insurance, retirement benefits, or other welfare or pension benefits, if any, to which such personnel may be entitled. TAP agrees to defend, indemnify, and hold harmless Client, Client's officers, directors, employees and agents,

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and the administrators of Client's benefit plans, from and against any claims, liabilities, or expenses relating to such compensation, tax, insurance, or benefit matters; provided that Client shall (1) promptly notify TAP of each such claim when and as it comes to Client's attention; (2) cooperate with TAP in the defense and resolution of such claim; and (3) not settle or otherwise dispose of such claim without TAP's prior written consent, such consent not to be unreasonably withheld. [Return to Home Page](#)

7. **Workers' Compensation.** Notwithstanding any other workers' compensation or insurance policies maintained by Client, TAP shall procure and maintain workers' compensation coverage sufficient to meet the statutory requirements of every state in which TAP's personnel are engaged in Client's work. [Return to Home Page](#)

8. **TAP's Agreements with Personnel.** TAP shall obtain and maintain in effect written agreements with each of its personnel who participate in any of Client's work under any Exhibit A-SOW. Such agreements shall contain terms sufficient for TAP to comply with all provisions of this Agreement and shall confirm that such personnel shall have no status as employees of Client and no claim under any Client benefit plan. [Return to Home Page](#)

9. **State and Federal Taxes.** As neither TAP nor its personnel are Client's employees, Client shall not take any action or provide TAP's personnel with any benefits or commitments inconsistent with any of such undertakings by TAP. In particular, Client will not withhold FICA (Social Security) from payments to TAP, Client will not make state or federal unemployment insurance contributions on behalf of TAP or its personnel, Client will not withhold state and federal income tax from payment to TAP, Client will not make disability insurance contributions on behalf of TAP, and Client will not obtain workers' compensation insurance on behalf of TAP or its personnel. [Return to Home Page](#)

10. **WARRANTY DISCLAIMER.** TAP HEREBY WARRANTS THAT THE SERVICES PROVIDED UNDER THIS AGREEMENT SHALL BE PERFORMED IN A COMPETENT AND WORKMANLIKE MANNER ACCORDING TO INDUSTRY STANDARDS. ANY BREACH OF THE FOREGOING WARRANTY MUST BE REPORTED BY CLIENT IN WRITING TO TAP WITHIN THIRTY (30) DAYS AFTER THE PERFORMANCE OF SUCH NON-CONFORMING SERVICES, IN WHICH CASE TAP WILL, AT TAP'S OPTION, EITHER REPERFORM THE SERVICES AT TAP'S SOLE COST, OR REPLACE THE ASSIGNED RESOURCES PERFORMING SUCH SERVICES, AS CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR SUCH BREACH. THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT ARE PROVIDED WITHOUT ANY OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, DESCRIPTION, INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. [Return to Home Page](#)

11. **LIMITATION OF LIABILITY AND DAMAGE DISCLAIMER.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LIABILITY OF TAP, ITS AGENTS, EMPLOYEES AND OTHER RESOURCES, CONTRACTORS, SUBCONTRACTORS, OFFICERS, DIRECTORS, SHAREHOLDERS, SUCCESSORS OR ASSIGNS FOR LOSS OR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER FOR BREACH OF THIS AGREEMENT, BREACH OF WARRANTY OR OTHERWISE SHALL ALL BE LIMITED TO THE AMOUNT OF FEES PAID OR PAYABLE TO TAP BY CLIENT UNDER THE EXHIBIT A-SOW FROM WHICH THE CLAIM AROSE DURING THE SIX (6) MONTH PERIOD PRIOR TO THE CLAIM, WHETHER THE LIABILITY ARISES FROM CONTRACT, TORT OR OTHER CLAIMS. TAP IS NOT AN INSURER AND ITS PRICING REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL TAP BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND OR FOR ANY COSTS OF PROCUREMENT OF SUBSTITUTE SERVICES OR ANY LOST PROFITS, LOST BUSINESS, LOSS OF USE OF DATA OR INTERRUPTION OF BUSINESS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER FOR ANY BREACH OF THIS AGREEMENT OR ANY SERVICES PERFORMED BY TAP, EVEN IF TAP WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. [Return to Home Page](#)

12. **Term and Termination.** The term of this Agreement shall commence on the date of execution by both Parties to this Agreement and shall continue until terminated by either Party in accordance with this Agreement. Either Party may terminate either an Exhibit A-SOW or this Agreement (including all Exhibits A-SOW) for any reason by giving the other Party thirty (30) days written notice of such termination. The Party receiving such notice may elect to waive such notice period and have the Agreement or Exhibit A-SOW, as applicable, terminate immediately. TAP may, in addition to all other available remedies, terminate either the applicable Exhibits A-SOW or this Agreement (including all Exhibits A-SOW) immediately if Client is in default

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of any payment obligation to TAP as provided in Section 3. If Client is dissatisfied with TAP resource(s) performance, TAP will replace resource(s) within a reasonable and agreed upon time frame. In this situation, Client may terminate either the applicable Exhibits A-SOW or this Agreement (including all Exhibits A-SOW) immediately and terminate within one (1) week. Depending on the severity of any action, this may require immediate dismissal of TAP resource(s). Upon termination of this Agreement (including all Exhibits A-SOW) or one or more Exhibits A-SOW, Client shall immediately pay to TAP all accrued Fees and Expenses up to the date of termination. Each Party shall promptly return to the other all data, materials, and other properties of the other which may have come into their possession while performing services pursuant to this Agreement. [Return to Home Page](#)

13. **Non-exclusive.** TAP shall retain the right to perform work for others during the term of this Agreement. Client shall retain the right to cause work of the same or a different kind to be performed by its own personnel or other contractors during the term of this Agreement. [Return to Home Page](#)

14. **Confidentiality and Proprietary Information.**

14.1 **Definitions.** (i) “**Discloser**” means the Party that discloses any of its “Confidential Information” or “Trade Secrets” (as such terms are defined below) to the other Party hereto (the “**Recipient**”). (ii) “**Confidential Information**” means items which are either: (a) marked “Confidential”, or with some similar designation; or (b) proprietary or confidential data, documents, materials or information which is valuable to the Discloser, its subsidiaries or affiliates, and the details of which are not generally known to the competitors of the Discloser; or (c) confidential information of a third party in the possession of Discloser with respect to which Discloser is obligated to maintain its confidentiality. For the avoidance of doubt, “Confidential Information” excludes Trade Secrets; provided, however, that if information defined as a Trade Secret hereunder ceases to be a Trade Secret as defined by applicable law or this Agreement, such information meeting the applicable requirements of this definition may still be deemed to be Confidential Information under this Agreement. To the extent it does not constitute Trade Secrets, Confidential Information of TAP includes the terms, condition and pricing of this Agreement and any Exhibit. (iii) “**Trade Secrets**” means, unless otherwise defined by applicable law (which changes are automatically incorporated herein by this reference) means information, without regard to form, including, but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers which is not commonly known by or available to the public and which information: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

14.2 **Restrictions.** Except as otherwise expressly permitted by this Agreement or Discloser, Recipient will keep the Confidential Information and Trade Secrets of the Discloser strictly confidential and will not disclose, publish, transfer or otherwise use any Confidential Information or Trade Secrets of Discloser for a period of: (i) three (3) years following the disclosure thereof with respect to any Confidential Information; and (ii) with respect to Trade Secrets for the longer of: (1) three (3) years following the disclosure thereof, or (2) as long as such Trade Secret remains a “Trade Secret” as defined under applicable law. The Parties’ confidentiality obligations will survive any termination or expiration of this Agreement for the time periods as stated in this Section.

14.3 **Exceptions.** The restrictions set forth in Section 8.2 of this Agreement will not apply to: (i) information which is or becomes publicly available through no action on Recipient’s part; (ii) information which was in Recipient’s possession at the time of disclosure to Recipient by Discloser; (iii) information which is hereafter received by Recipient from a third party (other than an affiliate or contractor of Discloser) who is not subject to any confidentiality or non-disclosure obligations to Discloser; or (iv) information independently developed by Recipient without any review or use of Confidential Information or Trade Secrets of Discloser. The prohibitions on disclosure of Confidential Information or Trade Secrets contained in this Agreement shall not apply to the extent that such Confidential Information or Trade Secrets are disclosed as required by law or regulation or in response to a valid order of a court or other governmental body of the United States or any political subdivisions thereof, but only to the extent of and for the purposes of such law, regulation, or order and only if the Recipient (if legally permissible to do so) first notifies the Discloser so that the Discloser may seek an appropriate protective order. Recipient will reasonably cooperate

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with Discloser's counsel in their efforts to obtain a protective order or similar remedy to accord some form of confidential treatment to any such information of Discloser.

14.4 **Permitted Use.** Recipient will use the Confidential Information and Trade Secrets of Discloser solely in connection with the evaluation and performance of the Services and not for any other purpose, unless otherwise approved by Discloser. Recipient may make limited and controlled disclosures of the Discloser's Confidential Information and Trade Secrets to Recipient's directors, officers, employees, consultants and advisors ("**Recipient Staff**") who need to know the Discloser's Confidential Information or Trade Secrets for the purpose of assisting Recipient in the evaluation or performance of this Agreement or the Services; provided however: (i) Recipient will inform all Recipient Staff, in advance, of the confidential nature of the Discloser's Confidential Information and Trade Secrets; (ii) Recipient ensures such Recipient Staff are bound by obligations of confidentiality substantially similar to those imposed by this Agreement; and (iii) Recipient shall be responsible for its Recipient Staff's handling of Confidential Information and Trade Secrets in accordance with this Agreement. Recipient will reproduce on any copy or abstract of Confidential Information or Trade Secrets of Discloser any proprietary rights legends placed thereon by Discloser.

14.5 **Return of Information.** Upon a written request by Discloser following the termination or expiration of this Agreement, Recipient will return to the Discloser all Confidential Information and Trade Secrets of the Discloser embodied in tangible form, unless Recipient has received a transfer of ownership therein pursuant hereto or unless Recipient must retain same solely for purposes of performing further services for Discloser pursuant to this Agreement or some other agreement between the Parties; provided, however that any such retained Confidential Information or Trade Secrets will remain subject to the confidentiality restrictions of this Agreement. [Return to Home Page](#)

15. **Force Majeure.** TAP shall not be liable to Client for any failure or delay caused by events beyond TAP's control, including, without limitation, Client's failure to furnish necessary information, sabotage, failures or delays in transportation or communication, failures or substitutions of equipment, labor disputes, accidents, shortages of labor, fuel, raw materials, or equipment, or technical failures. [Return to Home Page](#)

16. **Non-Solicitation and Perm Conversion Terms.** In recognition of each Party's need to protect its respective legitimate business interests, neither Party shall during the term of this Agreement, and for a period of one hundred eighty (180) days after the termination of this Agreement, directly or indirectly, either for itself or on behalf of any business, individual, partnership, joint venture, entity, association or corporation, solicit for the purpose of employment any resources, contractors or subcontractors of the other Party, and Client shall not either for itself or on behalf of any third party, during the term of this Agreement and for a period of one hundred eighty (180) days thereafter, directly or indirectly (other than through TAP), contract with any employee, contractor or sub-contractor of TAP. Notwithstanding the foregoing, Client may hire as an employee (but not otherwise contract with) Assigned Resources who are assigned to Client under this Agreement, but must do so according to the following schedule and applicable placement fee:

Contract Period	Placement Fee
1 – 60 days	No Placement Permitted— Can Only Work Under this Agreement
60 – 90 days	15% of annual compensation
91-120 days	12% of annual compensation
121 to 150 days	10% of annual compensation
151 to 180 days	8% of annual compensation
181 days and beyond	No fee

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However, the above schedule and fees shall not apply to Client's customers, business partners, associates, vendors, joint ventures, or other businesses which have a direct relationship with Client, as these entities are not eligible to employ or contract directly with Assigned Resources provided to Client without the express written permission of TAP. Client shall use commercially reasonable efforts to prevent the solicitation or hiring of Assigned Resources by such customers, business partners, associates, vendors, joint ventures, or other businesses, if any of the aforementioned entities solicits or entices any Assigned Resources that such entities encounter via their relationship with Client to resign the Assigned Resource's relationship with TAP or to provide services in any capacity (other than via an agreement with TAP) to any aforesaid entity, whether directly through such entity or other third party, then Client will pay a conversion fee to TAP in accordance with the schedule set forth in this section. [Return to Home Page](#)

17. **Work Product and Existing Intellectual Properties.**

17.1 **Assignment of Work Product.** All software code, written procedures, and other tangible property which is originally developed by Assigned Resources specifically for Client and delivered to Client as part of the Services ("**Work Product**") shall be deemed "work made for hire" within the meaning and purview of section 101 of the United States Copyright Act, 17 U.S.C. Section 101. If and to the extent that any of the Work Product does not qualify as "work made for hire," upon payment in full for the Services pertaining to same, TAP hereby irrevocably transfers, assigns, and conveys its rights in such Work Product to Client, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. TAP shall, at Client's request and sole expense, execute all documentation necessary for Client to perfect their rights as provided hereunder.

17.2 **Pre-Existing Intellectual Properties.** As between the Parties, each Party will retain all ownership of, and all rights and interests in all ideas, concepts, know-how, information, inventions, patents, trademarks and service marks (including the goodwill associated therewith), copyrights, works of authorship and the writings or works in which any of the same are fixed (including, without limitation, all reports, software systems, routines, data models, technical data, processes, methods, machines, designs, code, documentation, systems, logos, corporate names, trade dress, and business information) as well as all proprietary rights (including copyright, patent, trade secret and all other intellectual property rights) that are: (i) owned or licensed by them prior to the Effective Date of this Agreement; (ii) not created as part of the Services. [Return to Home Page](#)

18. **Indemnification.** Each Party (the "**Indemnifying Party**") will defend at its expense (including court costs and attorney's fees) the other Party (including such Party's officers, directors, employees, and agents) (collectively, the "**Indemnified Party**"), from and against a third party claim asserted against Indemnified Party that arises out of or alleges bodily or personal injury, death, or damage to tangible personal property caused by the gross negligence or willful misconduct of the Indemnifying Party (a "**Claim**"). Indemnifying Party will indemnify and hold harmless Indemnified Party from and against any resulting costs, damages and reasonable attorneys' fees finally awarded by a court of competent jurisdiction (or agreed by Indemnifying Party pursuant to a written settlement) for such Claim. Indemnified Party will promptly notify the Indemnifying Party of any Claim so that the Indemnifying Party may defend any such action, during which time the Indemnified Party will fully cooperate with such defense and provide full authority to defend or settle the claim or suit. The Indemnified Party may independently appear in any underlying third-party action at its own expense (the Indemnified Party's legal fees following such notice will be its own responsibility, except in actions where both Parties are defendants, and the Indemnified Party has a different defense than that of the Indemnifying Party, or if the Parties have a conflict of interest). The Indemnifying Party will not settle any third-party action involving non-monetary obligations of the Indemnified Party without the Indemnified Party's prior written consent, which consent will not be unreasonably withheld or delayed. The Indemnifying Party will have no obligation under this Section to the extent the Claim arises out of the gross negligence or willful misconduct of Indemnified Party, or, in the case of a Claim pertaining to the Assigned Resources, TAP will have no obligation under this Section to the extent the Claim arises out of any action or inaction taken at the direction or instruction of Client or any of its officers, directors or representatives. The Indemnifying Party will not settle any third-party action involving non-monetary obligations of the Indemnified Party without the Indemnified Party's prior

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written consent, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, TAP assumes no liability whatsoever for a Claim resulting from or arising out of the action or actions of a bill through or “pass-thru” consultant referred to TAP by Client. Client will indemnify and hold TAP harmless with respect to any claims by Client’s employees or other third parties arising out of the acts of such bill through or “pass-thru” consultants in the manner set forth above and regardless of whether such claims against TAP arise out of or allege harm caused by the gross negligence or willful misconduct of Client. For the purposes of this Agreement, a bill through or “pass-thru” consultant shall be defined as a Client identified consultant who is placed on TAP’s payroll at Client’s request. [Return to Home Page](#)

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Permanent Placement Services. TAP agrees to provide Client with permanent placement search services for Candidate(s) ("Candidate") to fill information technology or other employment openings.

Should Client hire a TAP referred Candidate, Client agrees to pay TAP a fee of **20%** of said Candidate's annual starting salary for non-leadership positions. Leadership positions include manager and above roles and have a fee of **25%**. Client is under no obligation to hire a TAP referred Candidate. Client may hire a Candidate of its choosing found by other means than TAP.

1. TAP offers a ninety (90) day prorated Candidate replacement guarantee on a TAP referred Candidate hired by Client. Should a TAP referred Candidate hired by a Client either resign or be terminated for unsatisfactory performance within ninety (90) days of Candidate's employment start date with Client, TAP will credit Client a portion of the original fee paid by Client to TAP towards a newly referred Candidate replacement fee according to the table below:

Candidate Termination / Resignation With	Amount of Fee Credited Toward Replacement Candidate
1 to 30 days	Full Fee
31 to 60 days	Two-thirds (2/3) of Fee
61 to 90 days	One-third (1/3) of Fee

This guarantee is effective only upon the following conditions:

- Hired Candidate's termination or resignation is not due to resources cutbacks, layoffs or outsourcing, the elimination of the position, or a substantial change in the job description or reporting structure.
- Full payment by Client of TAP's fee is received within thirty (30) days of referred Candidate's start date.
- TAP is notified by Client of a hired Candidate's termination or resignation within three (3) working days of said termination or resignation date.

Fees for permanent placement services rendered by TAP shall be due and payable thirty (30) days from hired Candidate's actual starting date of employment with Client. TAP shall invoice Client on or before Candidate's start date. Under no circumstances shall a TAP referred Candidate be obligated to Client for any portion of TAP's fee as payable by Client to TAP. Within one (1) year of Client's receipt of a TAP referred Candidate resume, any contact made by Client with said TAP referred Candidate concerning potential job openings and/or employment opportunities based on the information provided by TAP, shall be considered the result of a referral by TAP and a fee shall be due and payable from Client to TAP if said Candidate is hired by Client. [Return to Home Page](#)

1. **Notices.** All notices under this Agreement must be in writing and delivered to the individual and address designated on the signature page of the executed agreement. [Return to Home Page](#)

2. **Entire Agreement.** This Agreement (including all Exhibits A-SOW) constitute the entire agreement and understanding between the Parties and supersedes all contrary agreements, understandings, covenants, promises, warranties and representations, oral or written, express or implied between the Parties prior to the effective date of this Agreement and each Exhibit A-SOW. This Agreement and each Exhibit A-SOW may only be amended by writing signed by an authorized representative of each Party.

3. **Assignment of Agreement.** Neither Party may assign this Agreement without the prior written consent of the other Party. Any attempted assignment in violation of this provision will be deemed to be null and void. [Return to Home Page](#)

4. **Governing Law.** Texas law (without regard to any jurisdiction's conflict-of-laws principles) exclusively governs all matters based upon, arising out of, or relating in any way to this Agreement, including without limitation, all disputes, claims

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or causes of action arising out of or relating to this Agreement as well as the interpretation, construction, performance and enforcement of this Agreement. All actions or proceedings arising out of or related to this Agreement may only be brought in a state or federal court located in Dallas County, Texas, and the Parties hereby consent to such venue and to the jurisdiction of such courts over the subject matter of such proceeding and themselves. [Return to Home Page](#)

5. **Section Headings.** The Section headings of this Agreement are for the convenience of the Parties only and in no way alter, modify, amend, limit, or restrict the contractual obligations of the Parties. [Return to Home Page](#)

6. **Severability; Waiver.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity of enforceability of any other provision of this Agreement. Further, all terms and conditions of this Agreement shall be deemed enforceable to the fullest extent permissible under applicable law, and, when necessary, the court is requested to "blue-pencil" rewrite, modify and reform any and all terms or conditions to give them the maximum legal effect. Any waiver by a Party to declare a breach or seek any remedy available to it under this Agreement or by law must be in writing and signed by an authorized representative of such Party and will not constitute a waiver as to any past or future breaches or remedies. [Return to Home Page](#)

7. **General.** TAP's relationship to Client is solely that of an independent contractor. Neither Party will be deemed to be, or hold itself out as, a partner, principal, agent, employer, employee, or joint venturer of the other Party. Client warrants that its signatory of this Agreement has the authority to execute this Agreement for Client as its binding agent and that this Agreement does not violate any law, agreement or understanding by which Client is bound (and further warrants that any Party signing an Exhibit A-SOW on behalf of Client shall have the authority to bind Client thereby). This Agreement and any Exhibit A-SOW may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement or an Exhibit A-SOW by facsimile or other electronic means (e.g. "pdf" or "tif") shall be as effective as delivery of a manually executed counterpart of this Agreement. [Return to Home Page](#)

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Exhibit A

Resource Statement of Work (SOW)

Pursuant to the Consulting & Permanent Placement Master Services Agreement (MSA) ("Agreement") between _____ ("Client") and TAP Innovations, LLC. ("TAP"), TAP has agreed to source candidates to support Client. Signature by an authorized representative from each company indicates the below resource has been professionally screened by TAP and is approved by Client to place this resource in accordance with the following requirements. All work defined within this SOW will be performed and invoiced on a Time & Materials (T&M) basis, exclusive of any applicable taxes. Applicable taxes will be invoiced in addition to these fees. Payment of fees is not contingent upon delivery of any work product or deliverables. [Return to Home Page](#)

Hiring Manager		Request Date	
Job Title		Work Location	
Start Date		End Date	
Bill Rate/Salary		Expected Hours	
Responsibilities			

Resource Name	
Cost Estimate	
Travel Cost Estimate	

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PART 2: SOFTWARE APPLICATION TERMS OF USE

These Software Application - Terms of Use ("**Terms of Use**"), along with a signed Order Form (or other similar ordering document signed by the parties) ("**Order Form**") between TAP Innovations, LLC ("**TAP**") and the customer named in the Order Form ("**Customer**") form a binding agreement between TAP and Customer (the "**Agreement**"). The Agreement includes the Order Form, these Terms of Use and any other document incorporated by reference into either the Order Form or these Terms of Use. Capitalized terms used but not otherwise defined in these Terms of Use are defined in the Order Form.

The TAP software application(s) to be made available to Customer as a service (the "**Applications**") are identified in a signed Order Form. THESE TERMS OF USE GOVERN CUSTOMER'S USE OF THE TAP APPLICATIONS AS WELL AS RELATED SUPPORT SERVICES. CUSTOMER SHOULD READ THESE TERMS OF USE CAREFULLY.

CUSTOMER AGREES TO THESE TERMS OF USE, EITHER BY: (A) EXECUTING AN ORDER FORM THAT INCORPORATES THESE TERMS OF USE BY REFERENCE; OR (B) USING THE APPLICATIONS. If TAP and Customer sign a written services agreement that specifically supersedes these Terms of Use, then that written agreement, and not these Terms of Use will govern Customer's use of the Applications.

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1. **APPLICATIONS AND SUPPORT**

1.1 **Services.** Subject to all of the terms of this Agreement, including Customer's timely payment of Fees (as defined herein), TAP will make the Applications available to Customer as a service, along with related support services (the "Services"). TAP may provide the Applications and Services using its own infrastructure or using a third-party cloud computing services provider. TAP may, in its sole discretion, modify, enhance and/or expand the Applications at no additional cost to Customer. TAP may also modify, enhance or expand the Applications by providing additional features or functionality, which may, but are not required to be, added by Customer to this Agreement at additional cost. Such additional cost features and functionality may be added by mutual written agreement of the parties. Customer acknowledges that its purchase of the Services hereunder are not contingent on the delivery of any future functionality or features in any of the Applications.

1.2 **License Grant.** Subject to all of the terms of this Agreement, including Customer's timely payment of Fees, TAP hereby grants to Customer, during the Term of this Agreement, a limited, non-exclusive, non-sublicensable and non-transferrable license to access and use the Applications in the manner provided by TAP, solely for Customer's own internal business operations.

1.3 **Availability.** TAP will use commercially reasonable efforts to make the Applications available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which TAP will provide at least 8 hours electronic notice and which TAP will schedule, to the extent practicable, outside of normal office hours), and (b) any unavailability caused by circumstances beyond TAP's reasonable control, including, but not limited to, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving TAP's employees), Internet service provider failure or delay, failure or delay of service from any third party cloud computing services provider, or denial of service attack.

1.4 **Support.** Subject to all the terms of this Agreement, including Customer's timely payment of Fees (as defined herein), TAP will provide Customer with standard technical support services in accordance with TAP's Application, System & Data Support Program, as published by TAP from time-to-time. TAP's current Application, System & Data Support Program is listed below. TAP has the right to change, modify or amend its support program at any time in its sole discretion. Additional or upgraded support services may be available for an additional fee. Additional services may be outlined in a separate SOW.

1.4.1 TAP's Application, System & Data Support Program combines critical remote service monitoring with a tiered remote support staff to ensure solutions are base lined, optimized, monitored, and supported. When an event occurs, our systems automatically attempt to intercede proactively while alerting our support staff for efficient action and resolution. TAP's goal is to detect and resolve Customer Incidents proactively before a Customer even knows there is an Incident.

TAP uses industry leading monitoring and management software to provide secure remote support to system environments. TAP automated remote agents monitor all TAP services to provide insight for Customer environments 24x7x365.

1.4.2 TAP Managed Service Desk is designed to provide Customer application, system & data support. This covers all types of Incidents and Non-Incident Requests. Remote management tools allow for a quick and secure service desk platform for TAP technicians to resolve Incidents as quickly as possible. This service desk process is efficiently and effectively managed through TAP's agent-based ticketing system that has a standard phone number and email address for submitting tickets. This will be published in a separate SOW if applicable. Here's a list of Managed Solution Activities (but not limited to the list below) that TAP performs regularly to maintain and support Customer solutions. The handling of Customer Non-Incident Requests is outlined in Section 1.6 – Change Order Procedures below.

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- Ongoing application, system & data support
- Ongoing data transfer, integration job reconciliations, etc. for Customer specific needs
- Microsoft and other software patches and updates
- Hardware / Server utilization maintenance, optimization, and tuning
- Anti-virus, Malware, Web filtering management
- Regular environment penetration testing
- Firewall/Other Security appliance maintenance
- Cyber Security reviews/audits
- Network connectivity
- Database maintenance, optimization, monitoring
- Application, system and data calculation environment maintenance and monitoring
- Storage management
- VPN management and maintenance
- Data encryption monitoring and maintenance
- Backup / Disaster Recovery reviews/audits/testing
- 3rd party software / API changes, upgrades, etc.

1.4.3 TAP Service Desk Coverage. Below are the standard coverage hours, but these may be superseded in a separate Customer SOW.

Hours of Coverage	Coverage Notes
Business Hours: Monday – Friday, 7am – 7pm CST	Included
After Hours: Monday – Friday, 7pm – 7am CST Saturday – Sunday	Included Severity 1-2
Holidays: Jan 1, Memorial Day, July 4 th , Labor Day, Thanksgiving Day, Christmas Eve ½ Day, Christmas Day	Included Severity 1-2

Service Desk Severity Incidents	Description	Response Time
Severity 1 – Critical	Financial Impacting Catastrophic Failure	< 1hr-Bus Hrs; < 4 hrs-Non Bus Hrs
Severity 2 – High	Multiple end-users impacted	< 2hrs-Bus Hrs; < 6hrs-Non Bus Hrs
Severity 3 – Medium	1 End-User impacted	8 hrs – 1 business day
Severity 4 – Low	Informational or Non-Incident Requests	16 hrs – 2 business days

Support Tier	Description of Support Escalation
Tier 1	All support incidents begin at Tier 1 where the initial trouble ticket is created; the Incident is identified and clearly documented, and basic troubleshooting is initiated for single user Incidents. Immediate escalation occurs if it is identified that the Incident is affecting multiple users.
Tier 2	All support Incidents that cannot be resolved with Tier 1 Support are escalated to Tier 2, where more complex support on Incidents can be provided by more experienced engineers.
Tier 3	Support Incidents that cannot be resolved by Tier 2 are escalated to Tier 3 and TAP's Chief Architect, where support is provided by the most qualified and experienced engineers

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	who have the ability to collaborate with vendor engineers and managerial personnel to resolve the most complex Incidents.
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1.5 Professional Services. From time to time, so long as this Agreement remains in full force and effect, TAP and Customer may, but are under no obligation to, enter one or more statements of work (each, an “**SOW**”) to engage set-up, implementation, consulting or other professional services (“**Professional Services**”) by TAP. Professional Services will only be provided pursuant to a signed SOW, which may be included as part of an Order From. Each SOW shall contain, at a minimum, the following information: (a) the scope of the Professional Services to be provided; (b) applicable rates and fees; (c) responsibilities and dependencies of each party; (d) agreed upon work product and specific deliverables, if any; and (e) signatures of authorized representatives. TAP have no obligation to provide Professional Services without a fully-executed SOW. Each SOW, regardless of whether it relates to the same subject matter as any previously executed SOW(s), shall become effective upon execution by authorized representatives of both *parties*.

1.6 Change Order Procedures. Customer Non-Incident Change Requests that require less than two (2) hours of work will be performed by TAP at no additional cost within 10 business days of the request. Non-Incident Change Requests greater than two (2) hours of work will be considered a change to the scope of Services and an SOW should be submitted as a written request to TAP describing the proposed change in reasonable detail (the “Change Order Request”). TAP shall prepare and submit a change order proposal (“Change Order”) that describes the proposed impact of the requested change, including, without limitation, modifications to projected schedules and estimated fees as a result of such change. Upon execution of a Change Order, the applicable SOW will be deemed amended as provided in the Change Order. No Change Order Request or Change Order shall be binding until agreed to in writing and signed by authorized representatives of each Party.

1.7 Software and Deliverables. The ownership of each Software and any Deliverables shall be as set forth in the SOW applicable to the development thereof. In the event that the ownership of Software is not set forth in an SOW, the Software shall be the exclusive property of TAP and Customer shall have only the right and license to use the Software and Deliverables for its own internal business purposes, subject to all of the terms and conditions of this Agreement. [Return to Home Page](#)

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2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Access to the Applications is subject to usage limits that are specified in the Order Forms. Unless otherwise specified in the applicable Order Form, Applications and Services are purchased as monthly user subscriptions and the Applications may not be accessed by more than the number of users (each a “User”). If Customer exceeds a contractual usage limit, TAP may work with Customer to seek to reduce Customer’s usage so that it conforms to that limit. If, notwithstanding these efforts, Customer is unable or unwilling to abide by a contractual usage limit, Customer will execute an Order Form for additional quantities of Users promptly upon request, and/or pay any invoice for excess usage in accordance with this Agreement. Additional Users may be purchased during the Term by signing an additional Order Form and paying the additional fees for such additional Users.

2.2 Customer will: (a) be responsible for its Users’ compliance with this Agreement (including the terms of use and policies of the applicable cloud computing service provider); (b) be solely responsible for the accuracy, quality, integrity, and legality of Customer Data (defined herein); (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Applications or the cloud server on which they are hosted, and notify TAP promptly of any such unauthorized access or use; (d) use the Applications only in accordance with this Agreement, and applicable laws and government rules and regulations; and (e) provide TAP with assistance, information and materials that are reasonably requested as necessary to effectively provide the Applications.

2.3 Customer will not, directly or indirectly, do any of the following: (a) make any Applications available to, or use any Applications for the benefit of, anyone other than Customer or its authorized Users; (b) sell, resell, license, sublicense, distribute, rent or lease any Applications; (c) use the Applications to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (d) interfere with or disrupt the integrity or performance of any the Applications; (e) attempt to gain unauthorized access to any Applications; or (f) permit direct or indirect access to or use of any Applications in a way that circumvents a contractual usage limit.

2.4 Customer will not, directly or indirectly: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Applications, or any documentation or data related thereto; (b) modify, translate, or create derivative works based on the Applications (except to the extent expressly permitted by TAP or authorized within the Services); (c) use any Applications for timesharing or service bureau purposes or otherwise for the benefit of a third; or (d) remove any proprietary notices or labels. With respect to any Applications that is distributed or provided to Customer for use on Customer premises or devices, TAP hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use such Applications during the Term only in connection with the Services.

2.5 Customer may not remove or export from the United States or allow the export or re-export of Applications or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.

2.6 Although TAP has no obligation to monitor Customer’s use of the Applications, TAP may do so and may prohibit any use of the Applications it believes may be (or alleged to be) in violation of this Section 2 or any other provision in this Agreement.

2.7 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Applications, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “Equipment”). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer’s knowledge or consent.

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3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Each party (the “**Receiving Party**”) understands that the other party (the “**Disclosing Party**”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “**Proprietary Information**” of the Disclosing Party). Proprietary Information of TAP includes non-public information regarding features, functionality and performance of the Applications. Proprietary Information of Customer includes non-public data provided by Customer to TAP to enable the provision of the Applications (“**Customer Data**”). The Receiving Party agrees: (i) to take reasonable precautions to protect the Proprietary Information of the Disclosing Party; and (ii) not to use (except in performance of the Applications or as otherwise permitted herein) or divulge to any third person the Proprietary Information of the Disclosing Party. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document: (a) is or becomes generally available to the public; (b) was in its possession or known by it prior to receipt from the Disclosing Party; (c) was rightfully disclosed to it without restriction by a third party; (d) was independently developed without use of any Proprietary Information of the Disclosing Party; or (e) is required to be disclosed by law.

3.2 Customer shall own all right, title and interest in and to the Customer Data, as well as any data that is based on or derived from the Customer Data and provided to Customer as part of the Applications. TAP shall own and retain all right, title and interest in and to (a) the Applications and the Services, and all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Professional Services or support, and (c) all intellectual property rights related to any of the foregoing.

3.3 Customer hereby grants TAP a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Services and/or Applications any suggestions, enhancement requests, recommendations, correction or other feedback provided by Customer, including Users, relating to the functionality and/or operation of the Services and/or Applications.

3.4 Notwithstanding anything to the contrary, TAP shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Applications and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and TAP shall also have the right (during and after the Term hereof) to (a) use such information and data to improve and enhance the Applications and for other development, diagnostic and corrective purposes in connection with the Applications and other TAP offerings, and (b) disclose such data, so long as it doesn’t otherwise disclose the Proprietary Information of Customer.

3.5 No rights or licenses are granted except as expressly set forth herein. [Return to Home Page](#)

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4. FEES AND PAYMENT FOR APPLICATIONS

4.1 Customer will pay TAP the applicable fees described in the Order Form for the Applications, Services and Professional Services in accordance with the terms of this Agreement (the “**Fees**”).

4.2 TAP will invoice Customer for Fees due under this Agreement. All invoices are due and payable within thirty (30) days following Customer’s receipt of the invoice unless otherwise stated in the Order Form. Unpaid amounts are subject to an interest charge of 5% per month on any outstanding balance, or the maximum permitted by law. Customer shall reimburse TAP for all expenses of collection of past due amounts.

4.3 Customer is responsible for all taxes associated with Applications and Services other than U.S. taxes based on TAP’s net income

4.4 If Customer’s use of the Applications exceeds any of the limitations set forth on the Order Form or otherwise requires the payment of additional Fees, Customer shall be billed for such usage and Customer agrees to pay the additional Fees in the manner provided herein.

4.5 TAP reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email).

4.6 If Customer believes that TAP has billed Customer incorrectly, Customer must contact TAP no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to TAP’s customer support department.

4.7 If any amount owing by Customer is thirty (30) or more days overdue, TAP may, without limiting its other rights and remedies, suspend the Customer’s access to the Applications until such amounts are paid in full.

4.8 TAP may increase fees annually to keep up with inflation. TAP will provide Customer(s) a minimum of sixty (60) days’ notice. [Return to Home Page](#)

5. TERM AND TERMINATION

5.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form, and shall be automatically renewed for additional periods renewal periods as specified in the Order Form (collectively, the “**Term**”), unless either party gives written notice of non-renewal to the other party at least ninety (90) days prior to the end of the then-current term.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days’ written notice (or five (5) days’ written notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Applications up to and including the last day on which the Applications are provided.

5.3 This Agreement may be terminated immediately by a party through written notice if the other party ceases to carry on business as a going concern, becomes the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or a receiver is appointed with respect to a substantial part of its assets.

5.4 TAP will make all Customer Data available to Customer for electronic retrieval within ninety (90) days following the date of termination of this Agreement. TAP will notify Customer when Customer Data is available for electronic retrieval, and Customer shall have at least thirty (30) days following such notice to retrieve its Customer Data; thereafter, TAP may, but is not obligated to, delete stored Customer Data unless instructed by Customer to do so.

5.5 All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability. [Return to Home Page](#)

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6. TAP WARRANTIES; DISCLAIMER

6.1 TAP shall use reasonable efforts consistent with prevailing industry standards to maintain the Applications in a manner which minimizes errors and interruptions in the Applications and shall perform the Professional Services in a professional and workmanlike manner. Applications may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by TAP or by third-party providers, or because of other causes beyond TAP's reasonable control, but TAP shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, TAP DOES NOT WARRANT THAT THE APPLICATIONS WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE APPLICATIONS.

6.2 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, THE APPLICATIONS, SERVICES AND PROFESSIONAL SERVICES ARE PROVIDED “AS IS” AND TAP DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. [Return to Home Page](#)

7. INDEMNIFICATION

7.1 Mutual Indemnity. Each party (“**Indemnifying Party**”) shall indemnify and defend the other party and its officers, directors, shareholders, members, managers, employees, agents and affiliates (each, an “**Indemnified Party**”) against any claim, including costs and reasonable attorney's fees, in which the Indemnified Party is named as a result of the grossly negligent or intentional acts or omissions of the Indemnifying Party, its employees or agents, while performing its obligations pursuant to this Agreement, which result in death, personal injury or property damage; provided that (a) the Indemnified Party gives the Indemnifying Party prompt notification in writing of any such claim and reasonable assistance, at the Indemnifying Party's expense, in the defense of such claim; and (b) the Indemnifying Party has the sole authority to defend or settle such claim as long as such settlement shall not impose a financial obligation on, or include an admission of liability by, the Indemnified Party. [Return to Home Page](#)

8. LIMITATION OF LIABILITY

8.1 TAP AND ITS LICENSORS AND SUPPLIERS ARE NOT RESPONSIBLE OR LIABLE WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY, FOR ANY: (A) INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR SPECIAL DAMAGES; (B) LOSS OF BUSINESS BY CUSTOMER, ERROR OR INTERRUPTION OF USE OF THE APPLICATIONS OR SERVICES, LOSS OR INACCURACY OR CORRUPTION OF CUSTOMER DATA, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; OR (C) ANY MATTER BEYOND TAP'S REASONABLE CONTROL; IN EACH CASE, WHETHER OR NOT TAP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2 TAP AND ITS LICENSORS AND SUPPLIERS ARE NOT BE RESPONSIBLE OR LIABLE FOR ANY DAMAGES OR OTHER LIABILITIES ARISING OUT OF OR RELATING TO THIS AGREEMENT THAT EXCEED, IN THE AGGREGATE (WHEN TAKEN TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS) THE FEES PAID BY CUSTOMER TO TAP FOR THE APPLICATIONS AND SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE EVENT OR ACT THAT GAVE RISE TO THE LIABILITY.

8.3 The limitations on liability in this Section 8 do not apply: (a) to claims based on personal injury or death; (b) in the event of gross negligence on the part of TAP or its licensors or suppliers; or (c) if prohibited by applicable law. [Return to Home Page](#)

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9. MISCELLANEOUS

9.1 To the extent a Customer purchase order or similar document contains terms and conditions that are different from or inconsistent with this Agreement, such terms are hereby rejected and this Agreement shall control over any such different or inconsistent terms.

9.2 If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

9.3 This Agreement is not assignable, transferable or sublicensable by Customer except with TAP's prior written consent. TAP may transfer and assign any of its rights and obligations under this Agreement without consent.

9.4 This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein.

9.5 All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

9.6 This Agreement shall be governed by the laws of the State of Texas without regard to its conflict of law's provisions. The United Nations Conventions on Contracts for the International Sale of Goods shall not apply to this Agreement.

9.7 In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees

9.8 No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind TAP in any respect whatsoever.

9.9 No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind TAP in any respect whatsoever.

9.10 TAP is an independent contractor; nothing in this MSA shall be construed to create a partnership, joint venture or agency relationship between the Parties. Neither Party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability on behalf of, or to otherwise bind, the other Party.

9.11 TAP may use subcontractors or independent contractors to perform any portion of the work to be performed under this MSA or any SOW. TAP will supervise and be responsible for any work performed by or acts or omissions of a subcontractor.

9.12 Neither Party shall be liable or deemed to be in default for any delay or failure in performance under this MSA for interruption of services resulting directly or indirectly from acts of God, civil or military authority, war, riots, civil disturbances, accidents, fire, earthquakes, floods, strikes, lock-outs, labor disturbances, foreign or governmental order, or any other cause beyond the reasonable control of such Party.

9.13 Non-Solicitation. In recognition of each Party's need to protect its respective legitimate business interests, neither Party shall during the term of this Agreement, and for a period of 2 years after the termination of this Agreement, directly or indirectly, either for itself or on behalf of any business, individual, partnership, joint venture, entity, association or corporation, solicit for the purpose of employment any resources, contractors or subcontractors of the other Party, and Client shall not either for itself or on behalf of any third party, during the term of this Agreement and for a period of 2 years thereafter, directly or indirectly (other than through TAP's Consulting Services), contract with any employee, contractor or subcontractor of TAP.

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PART 3: DATA PROCESSING AGREEMENT

This Data Processing Agreement (the "**DPA**") is entered into between TAP Innovations, LLC ("**TAP**") and the customer named ("**Customer**") in the Order Form. The DPA shall form part of the Written Agreement entered between the TAP and Customer to provide the Contracted Services (the "**Order Form**"), as outlined in Part 2: Software Applications Terms & Conditions.

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1. Definitions and interpretation.

1.1. Definitions: In this section, the following terms shall have the following meanings:

- (a) **"Business", "Collects"** (and **"collected"** and **"collection"**), **"Consumer"**, **"Business Purpose"**, **"Sell"** (and **"selling"**, **"sale"**, and **"sold"**) **"Service Provider"** and **"Share"** shall have the meanings given to them in §1798.140 of the CCPA.
- (b) **"Business Purpose"** has the meaning given in Section 4.2 of this DPA.
- (c) **"Personal Information"** means personal information as defined by §1798.140 of the CCPA submitted as Customer Data for processing pursuant to the Order Form.
- (d) **"Security Incident"** means accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access of or to Personal Information.
- (e) **"Applicable Laws"** means any US Federal, State, or Local Laws and Rules related to cyber security, data protection and privacy that is applicable to this engagement, which includes, but not limited to:
 - 1 **NYDFS** Cybersecurity Regulation, 23 NYCRR Part 500
 - 2 The Gramm-Leach-Bliley Act (**GLBA**), 15 U.S.C. § 6821 et seq.
 - 3 **FTC Financial Privacy Rule**, 16 CFR Part 313
 - 4 **FTC Safeguards Rule**, 16 CFR Part 314
 - 5 **HIPAA**, The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, was enacted on August 21, 1996. Sections 261 through 264 of HIPAA require the Secretary of HHS to publicize standards for the electronic exchange, privacy and security of health information. Collectively these are known as the *Administrative Simplification* provisions.
 - 6 **"California Consumer Privacy Act"** or **"CCPA"** means Title 1.81.5 California Consumer Privacy Act of 2018 (California Civil Code §§ 1798.100–1798.199), including as amended by the CPRA and any implementing regulations.
 - 7 **"CPRA"** means the California Privacy Rights Act of 2020, (2020 Cal. Legis. Serv. Proposition 24, codified at Cal. Civ. Code §§ 1798.100 et seq.), and its implementing regulations, as amended or superseded from time to time.

1.2. Interpretation: Capitalized terms used but not defined in this section shall have the meanings given in Part 2: Software Applications Terms & Conditions and Order Form. [Return to DPA Home Page](#)

2. Relationship with Part 2: Software Applications Terms & Conditions.

2.1. This DPA supersedes any conflicting or inconsistent provisions in the Order Form or Part 2: Software Applications Terms & Conditions related to data protection and, in the event of ambiguity, this DPA will prevail. Part 2: Software Applications Terms & Conditions and the Order Form, as amended and modified by this DPA, otherwise remains in full force and effect.

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- 2.2. This DPA shall be governed by and construed in accordance with governing law and jurisdiction provisions in Part 2: Software Applications Terms & Conditions, unless required otherwise by the Applicable Laws above.
- 2.3. This DPA shall not terminate automatically with the termination or expiration of the Order Form or Part 2: Software Applications Terms & Conditions but shall continue while TAP holds the data of Customer.
- 2.4. Both parties agree that this DPA shall be interpreted in favor of their intent to comply with the Applicable Laws and therefore any ambiguity shall be resolved in favor of a meaning that complies and is consistent with the Applicable Laws.
- 2.5. Both parties can provide notice to the other party for noncompliance with the Applicable Laws and have right to terminate the Order Form for failure to fulfil the terms of the DPA. [Return to DPA Home Page](#)
3. **Scope of this DPA.** This DPA applies only where, and to the extent that, TAP processes Personal Information and other protected information that is subject to the Applicable Laws on behalf of Customer as a Service Provider in the course of providing the Services pursuant to the Order Form. [Return to DPA Home Page](#)
4. **Data Protection.**
- 4.1. Service provider appointment: Customer is a Business and appoints TAP as its Service Provider to Collect and process the Personal Information for the Business Purpose. TAP acknowledges that it does not receive Personal Information as consideration for any services provided to Customer. TAP is responsible for: (i) compliance with its obligations under this DPA, (ii) for compliance with its obligations as a Service Provider under the Applicable Laws and (iii) shall provide the same level of privacy protection as required by the Applicable Laws. TAP shall notify Customer if it reasonably determines that it cannot meet its obligations under the Applicable Laws, and in such circumstances, and upon provision of notice to TAP, Customer shall be entitled to take reasonable and appropriate steps to remediate unauthorized use of Personal Information. Customer is responsible for compliance with its own obligations as a Business under the Applicable Laws and shall ensure that it has provided notice and has obtained (or shall obtain) all consents and rights necessary under the Applicable Laws for TAP to Collect and process the Personal Information for the Business Purpose.
- 4.2. Business purpose: TAP shall only Collect and process Personal Information as a Service Provider upon lawful documented instructions from Customer, including those in the Agreement, this DPA, and Customer's configuration of the Services or as otherwise necessary to provide the Services (the "**Business Purpose**"). TAP must not process Personal Information for any purpose other than for the Business Purpose, except where and to the extent permitted by the Applicable Laws.
- 4.3. Service provider certification: TAP shall not: (a) Sell or Share the Personal Information; (b) retain, use, or disclose the Personal Information for any purpose other than for the Business Purpose, including to retain, use, or disclose the Personal Information for a commercial purpose other than providing its Services under the Agreement unless permitted by the Applicable Laws; (c) retain, use, or disclose the Personal Information outside of the direct business relationship between the TAP and Customer; (d) process the Personal Information for targeted and/or cross context behavioral advertising; (e) combine Personal Information with any other data if and to the extent this would be inconsistent with the limitations on service providers under the Applicable Laws. TAP certifies that it understands the restrictions set out in this Section 4.3 and will comply with them.
- 4.4. Consumer's rights: TAP will, upon Customer's instructions: (a) use reasonable efforts to assist Customer in deleting and amending Personal Information in accordance with a Consumer's request (and shall instruct any service providers it has appointed to do the same) except where and to the extent permitted to retain the Personal Information pursuant to an exemption under the Applicable Laws; and (b) use reasonable efforts to assist Customer in responding to verified

TAP Solutions & Services Master Services Agreement (MSA)

Consumer requests received by Customer to provide information as it relates to the Collection of Personal Information for the Business Purpose.

- 4.5. **Assistance:** TAP will, upon Customer's instruction and upon proof of such a communication, provide reasonable assistance to Customer to enable Customer to respond to any correspondence, enquiry or complaint received from a Consumer, or any State or Federal agency in connection with the collection and processing of the Personal Information. TAP shall assist the Customer in performing impact assessments for data protection risks. [Return to DPA Home Page](#)
5. **Security.** TAP shall implement and maintain reasonable security procedures and practices appropriate to the nature of the Personal Information it will process to protect the Personal Information from and against a Security Incident in line with the TAP's Security Program. [Return to DPA Home Page](#)
6. **Security Incident.** TAP shall notify Customer without undue delay (and in time to fulfil any Security Incident reporting obligations) after becoming aware of a Security Incident and provide timely information relating to the Security Incident as it becomes known or is reasonably requested by Customer.
7. **Monitoring.** To the extent required by the Applicable Laws, Customer may take reasonable and appropriate steps to help ensure that the Personal Information is used by TAP in a manner consistent with Customer's obligations under the Applicable Laws. Customer may audit TAP's compliance with the terms of this DPA in the manner set out in this DPA once annually. Customer may elect to perform such an audit on its own behalf or pursuant to a formal direction or request for information from the a State or Federal agency. Customer must send TAP notice in writing of a request to conduct an audit. Once requested by Customer, subject to the confidentiality obligations set forth in this DPA, TAP shall make available to Customer (or Customer's independent third-party auditor) information regarding TAP's compliance with the obligations set forth in this DPA in the form of the third-party certifications and audits. Upon review of such materials, If Customer identifies areas that have not been covered that it is lawfully permitted to audit under this DPA, then Customer may submit reasonable requests for information security and audit questionnaires that are necessary to confirm TAP's compliance with this DPA, provided that Customer shall not exercise this right more than once per year.
8. **Subcontractors.** Customer agrees that TAP may engage third party subcontractors to process Personal Information in connection with the provision of the Services. TAP shall enter into written agreements with such subcontractors that contain substantially similar obligations as this DPA. TAP shall remain fully liable vis-à-vis the Customer for the performance of any such subcontractors that fail to fulfil their data protection obligations.
9. **Miscellaneous.** Upon receipt of Customer's written request, TAP shall (at Customer's election) return Personal Information or close Customer's account and delete all Personal Information within 90 days of the termination, save that this requirement shall not apply to the extent TAP is required by applicable law to retain some or all of the Personal Information, which TAP shall securely isolate and protect from any further processing, except to the extent required by applicable law.
10. **TAP's Security Program Policies & Procedures.** For more details on how TAP protects Customer data and information, refer to [TAP's Security Program Policies and Procedures](#).

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TAP Solutions & Services Master Services Agreement (MSA)

- **IN WITNESS WHEREOF**, the Parties have caused their duly authorized representatives to enter into this project effective as of the Effective Dates below.

TAP Innovations, LLC
539 W Commerce St, #249
#249, Dallas, TX 75208
(972) 842-4554

Client Name: _____

Address: _____

Email: _____

Invoice Email: _____

Phone: _____

Sign: _____

Name: R. John Ragsdale

Title: Founder CEO

Date: _____

Sign: _____

Name: _____

Title: _____

Date: _____

Sign: _____

Name: _____

Title: TAP Sales Executive/Reseller

Date: _____

Sign: _____

Name: _____

Title: TAP Sales Referral Partner (if applicable)

Date: _____

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TAP Solutions & Services Master Services Agreement (MSA)

DocuSign Envelope ID: A0C76F6E-173D-472C-A09F-34DA29C89CF6

Form W-9
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

**Request for Taxpayer
Identification Number and Certification**

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the
requester. Do not
send to the IRS.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.
TAP Innovations, LLC

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC

☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☒ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► **P**

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ►

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.
539 W Commerce St #249

6 City, state, and ZIP code
Dallas, TX, 75208

7 List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

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or

Employer identification number

8	2		3	3	0	4	5	4	0
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Sign Here

Signature of U.S. person ► *John Ragsdale*

Date ► **4/26/2022**

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

Cat. No. 10231X

Form **W-9** (Rev. 10-2018)

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