

Master Services Agreement

Purpose

This Services Agreement (this “Agreement”) is by and between the entity signatory to this Agreement (“Client”) and Directed Works LLC (“DW”). This Agreement sets forth the terms and conditions under which DW will provide Services and/or Deliverables specified in a Statement of Work executed by the parties and attached hereto as Exhibit A (an “SOW”). This Agreement is effective as of the date last executed, unless otherwise specified (the “Effective Date”). The parties agree as follows:

Services and Deliverables

DW shall perform Services and provide Deliverables as designated in an SOW. For purposes of this Agreement; (i) “Deliverables” means all strategies, documents, summaries, reports, analyses, studies, information, designs, files and/or other products or materials to be delivered and/or licensed by DW to Client in accordance with an SOW, and (ii) “Services” means the services which Client contracts DW to perform in accordance with an SOW, which services may include, without limitation, strategic planning, consulting, training, support, or other services. Any third party products that do not constitute Deliverables, whether owned or licensed to DW, will be subject to separate terms and conditions, and the Client shall agree to those terms to access such third party products.

During the term of an SOW, Client reserves the right to revise the Services and/or Deliverables, or the time frames associated with them. If Client elects to make such revisions, the parties will reach agreement on an equitable adjustment to the fees, time frames, or the scope of Services and/or Deliverables. If no agreement is reached, they shall continue under the terms of an SOW without any change to the initially agreed Services and/or Deliverables. With Client approval, DW may use subcontractors in providing Services and/or the delivery of Deliverables to Client. Client and DW have a non-exclusive relationship. DW is free to provide services, content and/or products to other entities so long as those activities do not violate the terms of this Agreement.

Client Obligations and Responsibilities

During the term of this Agreement, Client shall: (a) provide DW with all necessary access to Client’s facilities, personnel, and materials; and (b) obtain any consent required from a third party to permit DW to access and/or use that third party’s IT systems and proprietary material in Client’s possession and control in order for DW to perform its obligations under this Agreement and an SOW. Client agrees that the delivery of Deliverables and the performance of Services under each SOW are time sensitive. In order for DW to perform as requested, Client hereby agrees to promptly respond to all communications initiated by DW in a timely manner. Client’s failure to be responsive to DW’s personnel will negatively impact DW’s ability to deliver the Deliverables and perform the Services.

Should Client fail to perform all of its obligations and responsibilities under this Agreement, DW shall receive an appropriate extension of time to provide the Services and/or Deliverables under this Agreement or shall be relieved from performance of the Services and/or delivery of the Deliverables, in DW’s sole discretion, if such Services and/or Deliverables were time sensitive. Further, in the event of Client’s failure to comply with any warranty under this Agreement, DW shall not be held responsible or liable for any resulting delay in providing Deliverables under this Agreement, and Client shall promptly reimburse DW for all additional costs and expenses incurred by DW as a direct result of such failure by Client.

Warranties

DW warrants that all Deliverables provided to Client shall be original work of DW and/or that DW has or will have acquired all rights necessary to fulfill its obligations, and to transfer or grant Client the rights, set forth in this Agreement. DW warrants that all Services shall be carried out in a diligent, prompt, and professional manner by individuals with the necessary knowledge, skill and training to provide such Services. DW warrants that all Services and Deliverables shall be provided in the timeframes set forth in an SOW, provided Client has timely, accurately and completely complied with its obligations under the applicable SOW.

THE DELIVERABLES AND SERVICES PROVIDED BY DW ARE PROVIDED “AS IS,” WITH NO OTHER WARRANTIES. DW DISCLAIMS AND CLIENT HEREBY WAIVES ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR USE OR PURPOSE.

Acceptance

Unless otherwise provided in an SOW, the Services and/or Deliverables are deemed accepted seven (7) calendar days after delivery or performance unless, within that time, Client provides written notice to DW that the Services rendered or Deliverables delivered were not in substantial conformance with agreed to specifications. If Client provides such written notice to DW, DW will use commercially reasonable efforts to repair, correct, re-perform or replace the Deliverable and/or Services, in DW's sole discretion, within a reasonable time of its receipt of the notice.

Ownership

Upon Client's payment in full for Services rendered and Deliverables delivered, all work product created by DW specifically for Client pursuant to an executed SOW, including the Deliverables (collectively, the "Work Product"), shall be the property of Client and DW hereby assigns all right, title and interest in and to the Work Product to Client. Notwithstanding the foregoing, nothing in this Agreement assigns or licenses to Client any of DW's proprietary methodologies, trade secrets or internal strategies ("Proprietary Materials"). To the extent that, by operation of law, Client owns any intellectual property rights in such Proprietary Materials, Client hereby assigns to DW all rights, title and interest in such Proprietary Materials.

Compensation

DW will be compensated for Services and/or Deliverables in accordance with the terms of an SOW. Client shall be responsible for paying all taxes relating to its purchase and use of Services and/or Deliverables, except for those taxes based on DW's income, or which is DW's responsibility. Client shall be responsible for all agreed to expenses and costs incurred by DW while performing under an SOW. Payment for the delivery of Deliverables and/or the provision of Services will be due within thirty (30) days of the date that DW submits an invoice to Client specifying the amount due. In the event that DW does not receive payment from Client within thirty (30) days of the invoice date, the invoiced amount will be subject to a financing charge of one and one-half percent (1.5%) or the maximum rate allowed by law, whichever is higher.

Confidentiality

If the parties have executed a Mutual Nondisclosure Agreement ("MNDA"), then the terms of the MNDA are integrated herein by this reference. If the parties have not executed a MNDA then the following confidentiality provision applies:

During this Agreement, each party may have access to information that is considered confidential by the other. This information may include, but is not limited to, Student information, Proprietary Materials, technology, procedures, protocols, specifications, customer information, product information, proposed business arrangements, methods of operation and compilations of data ("Confidential Information"). Confidential Information must be marked or identified as "confidential" by the disclosing party, unless the information should reasonably be understood by the receiving party to be confidential or proprietary under the circumstances.

Customer agrees that none of its personnel will reproduce or otherwise imitate the Proprietary Materials of DW. All of DW's Services are delivered using proprietary methods and unauthorized use of DW's Proprietary Materials constitutes a material breach of this Agreement that entitles DW to seek injunctive relief.

Each party shall use the other's Confidential Information only for the purposes of this Agreement and/or an SOW. Each party shall maintain the confidentiality of the other party's Confidential Information in the same manner in which it protects its own Confidential Information of like kind, but in no event shall either party take less than reasonable precautions to prevent the unauthorized disclosure or use of the other party's Confidential Information. Neither party shall export, disseminate or otherwise transfer, in writing, orally and/or electronically, the other party's Confidential Information outside of the United States.

Each party is permitted to disclose the other party's Confidential Information to its employees, contractors and other third parties ("Recipients") on a need to know basis only, provided that such Recipients have contractual or legal confidentiality obligations to that party no less stringent than those contained in this Agreement. Each party shall be and remain fully liable and responsible for its Recipients' unauthorized disclosure or use of the other party's Confidential Information.

Each party is permitted to disclose the other party's Confidential Information as legally required in response to a court order, subpoena, administrative proceeding and/or similar legal process; provided that it gives the other party reasonable notice of the request, and an opportunity to defend and/or attempt to limit or prevent the disclosure of its Confidential Information.

The confidentiality provisions of this Agreement do not apply to information that is or becomes generally available or known to the public through no act or omission of the receiving party; was received lawfully from a third party through no breach of any obligation of confidentiality owed to the disclosing party; or created by a party independently of its access to or use of the other party's Confidential Information. Upon termination of this Agreement, each party shall return the other party's Confidential Information and shall not use the other party's Confidential Information for its own, or any third party's, benefit.

The provisions of this Section shall survive termination of this Agreement for so long as the Confidential Information remains confidential.

Term

This Agreement shall be effective as of the Effective Date and shall continue for a period of one (1) year after the Effective Date, unless terminated in accordance with the terms of this Agreement. This Agreement will automatically renew for successive one (1) year terms. Unless otherwise set forth in an SOW, either party may terminate this Agreement and/or an SOW by providing the other party with written notice at least fourteen (14) days prior written notice.

Termination. The Agreement and each SOW may be terminated by either party for cause if the other party commits a material breach of this Agreement and/or an SOW, the non-breaching party provides the breaching party with notice specifying the breach in reasonable detail (the "Breach Notice"), and the breaching party fails to cure such breach within fourteen (14) days of its receipt of the Breach Notice. In the event of termination of this Agreement pursuant to this Section, Client shall pay DW all fees owed for all Services and/or Deliverables provided by DW as of the effective date of termination. If Client terminates an SOW and/or this Agreement, Client shall pay DW all fees owed for all Services and/or Deliverables that would have been due under an SOW had the SOW and/or this Agreement not been terminated. All provisions of this Agreement relating to ownership, limitations of liability, confidentiality and indemnification shall survive termination of this Agreement.

Indemnification

Except to the extent Client is obligated to indemnify DW hereunder, DW shall defend, at its sole expense, any third party claim, demand or suit against Client ("Claim") alleging and/or arising out of the following, and shall indemnify and hold Client harmless from and against any and all losses, liabilities, damages, fines, penalties, costs, expenses and/or fees (including reasonable attorneys' fees) (collectively, "Losses") incurred by, or awarded or assessed against, Client in connection with the Claim, or reached through a negotiated settlement of the Claim: (a) that Client's authorized use of any Deliverable in the form provided by DW infringes a third party's intellectual property rights; (b) that DW, its employees, or subcontractors were grossly negligent or committed an intentional act that caused injury to a person or damage to property, or failed to comply with any applicable law, statute, regulation or ordinance; and/or (c) DW's material breach of this Agreement.

DW will have no obligation to indemnify Client to the extent a Claim for infringement would not have arisen but for (a) Client's or any third party's unauthorized use, misuse or modification of the Deliverable; or (b) Client's failure to perform its obligations or the warranties specified in this Agreement and an SOW.

Client shall defend, at its sole expense, any Claim alleging and/or arising out of the following, and shall indemnify and hold DW harmless from and against any and all Losses incurred by, or awarded or assessed against, DW in connection with the Claim, or reached through a negotiated settlement of the Claim: (a) that Client, its employees, or subcontractors was grossly negligent or committed an intentional act that caused injury to a person or damage to property, or failed to comply with any applicable law, statute, regulation or ordinance; and/or (b) Client's material breach of this Agreement.

Limitation of Liability. In no event shall DW be liable to Client in relation to this Agreement or the Services and/or Deliverables, regardless of the form of action or theory of recovery, for any: (a) indirect, incidental, consequential, special, punitive or exemplary damages, regardless of whether DW has been made aware of their possibility; (b) lost profits, loss of data or business interruption losses; and/or (c) direct damages in an amount in excess of the fees paid to DW during the three (3) month period immediately prior to the occurrence of the event giving rise to the applicable claim. Any claims relating to this Agreement shall be brought within one (1) year after the party asserting the claim knew, or reasonably should have known, of the existence of the claim.

General

The relationship between Client and DW is that of independent contractor. Nothing in this Agreement shall be construed as creating a relationship between Client and DW of joint venturers, partners, employer-employee, or agent. Neither party has the authority to create any obligations for the other, or to bind the other to any representation or document.

Each party acknowledges that a material breach of this Agreement will cause immediate and irreparable damage to the other party, entitling it to seek injunctive relief. Each party specifically consents to the issuance of temporary, preliminary, and permanent injunctive relief to enforce the terms of this Agreement. In addition to injunctive relief, DW is entitled to all money damages available under the law.

This Agreement includes the terms and conditions of this Agreement; all addenda, SOW and change orders entered into by the parties. This Agreement may not be modified except by a writing signed by both parties. Except as expressly provided herein, the remedies accorded the parties under this Agreement are cumulative and in addition to those provided by law, in equity or elsewhere in this Agreement.

Any waiver of a party's right or remedy related to this Agreement must be in writing, signed by that party to be effective. No waiver shall be implied from a failure of either party to exercise a right or remedy. In addition, no waiver of a party's right or remedy will effect the other provisions of this Agreement.

Neither party shall be responsible or liable for any delay or failure in performing its obligations under this Agreement if such delay or failure is the direct result of causes outside of that party's reasonable control, including, without limitation, power outages, accidents, strikes, fires, war or acts of God.

This Agreement shall be governed by the laws of the State of Michigan (exclusive of its choice of law rules), and the federal laws of the U.S.

If any provision of this Agreement and/or an SOW is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be enforced to the fullest extent that it is valid and enforceable under applicable law. All other provisions of this Agreement shall remain in full force and effect.

All notices must be in writing and sent to the individual who executed this Agreement on the other party's behalf, either by hand delivery; certified mail, return receipt requested; overnight courier; or by e-mail and shall be effective when received by such party at the address listed herein or other address provided in writing.

DW may refer to Client, the Services and Deliverables, either directly or indirectly, for purposes of public case studies after Client's prior written approval.

Neither party may assign this Agreement or any SOW, in whole or in part, without the other party's prior express written consent, which shall not be unreasonably withheld or delayed; provided, however that either party may assign this Agreement or any SOW to a successor-in-interest or to a purchaser of substantially all of its assets or equity. Any attempted assignment without such consent shall be void. This Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

AGREED AND ACCEPTED

Directed Works LLC



By: _____

By: _____

Date: _____

Date: _____

Samuel Lolla

Authorized Representative

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