

# PARSEC DATA MANAGEMENT, INC. MASTER SERVICES AGREEMENT

This Master Services Agreement (the “Agreement”) is made by and between Parsec Data Management, Inc., (“Parsec”) and the Entity or Individual (“Client”) as listed on the incorporated Sales Order.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree as follows:

## 1. Definitions.

- 1.1. “Agreement”: As used herein, the term “Agreement” shall include this Master Services Agreement and any Sales Order(s), Appendices or Addenda hereto, which are hereby incorporated by reference. To the extent that there is a conflict between any provision of this Master Services Agreement and any Sales Order(s), Appendix, or Addendum hereto, the applicable provision of said Sales Order(s), Appendix, or Addendum shall control.
- 1.2. “Deliverables”: The services and/or materials to be provided by Parsec to Client under this Agreement, and which are described in the Sales Order(s), Appendix, or Appendices hereto.
- 1.3. “Sales Order”: The Sales Order is a form that sets out the Deliverables that Parsec has agreed to supply to the Client including, without limitation, any such paper or web-based Sales Order form or any form that Parsec completes on behalf of the Client in the course of any telephoned order.

## 2. Deliverables.

- 2.1. **Selected Deliverables.** In consideration for Client’s performance of its obligations hereunder, including receipt by Parsec of the fees described in the Sales Order(s), Appendix, or Appendices hereto, Parsec will provide the Deliverables in accordance with the development and/or delivery schedule(s) and all other terms and conditions set forth in this Agreement or any Sales Order(s), Appendix, or Appendices hereto.
- 2.2. **Release of Deliverables.** Parsec shall have no obligation to deliver or release any Deliverables, Website, or portions thereof until all fees and other charges then owing are paid in full.

## 3. Client and Parsec’s Obligations.

- 3.1. **Notices.** Client shall notify Parsec within seven (7) days, at Parsec’s notice address herein as set forth in this section of the Agreement, of any notices served on Client that might adversely affect Parsec, including but not limited to notices of any claims or proceedings that involve any Deliverables. Client shall also promptly notify Parsec as set forth in Section 11.9 of this Agreement, at its notice address as set forth in this section of the Agreement, of any issues with any Deliverables of which Client becomes aware. Parsec shall notify Client within seven (7) days as set forth in Section 11.9 of this Agreement, at client’s notice address herein, of any notices served on Parsec that might adversely affect Client, including but not limited to notices of any claims or

proceedings that involve any Deliverables. Parsec shall also promptly notify Client, at its notice address as set forth in this section of the Agreement, of any issues with any Deliverables of which Parsec becomes aware including the ability to meet future Deliverables.

- 3.2. **Representations and Warranties.** Client represents and warrants that: It has any necessary authorization or rights to use and store any data files and all information contained therein, as well as all trademarks, service marks, trade names, and domain names used in or in connection with the Deliverables, and that all such data files and other material comply with the AUP as defined in section 9.
- 3.3. **Client Responsible for its Own Use of Deliverables.** Client acknowledges and agrees that it is solely and completely responsible for assessing its own internal computer, Internet service provider, and/or private lease line needs and that Parsec exercises no control whatsoever over the Internet. Client assumes total and complete responsibility for Client's use of the Deliverables. Client further understands and agrees that:
- (i) Client is solely responsible for the content and accuracy of all reports and documents prepared in whole or in part through use of the Deliverables,
  - (ii) use of the Deliverables, or lack thereof, does not relieve Client of any professional obligation concerning the preparation and review of such reports and documents,
  - (iii) Client agrees that it will not rely upon Parsec or the Deliverables for any advice or guidance regarding compliance with federal and state laws or the appropriate tax treatment of items reflected on such reports or documents, and
  - (iv) Client will review any calculations made using the Deliverables and satisfy itself that those calculations are correct.

#### 4. Fees and Payment.

- 4.1. **Fees.** Client agrees that it will pay Parsec the fees which are described in the Sales Order(s), Appendix, or Appendices hereto. Client agrees to also reimburse Parsec for Parsec's materials, outside services, and expenses incurred in developing, hosting, and/or providing any maintenance, support, or other services in connection with the Deliverables, including without limitation all software license fees, telecommunications charges, and related travel expenses. Client understands that it will be notified in advance of additional estimated charges by Parsec and Client agrees that Parsec will not perform this work or provide services without authorization from Client.
- 4.2. **Payment.** Client agrees to pay Parsec according to the payment terms set forth in this Agreement, in any Sales Order(s), Appendix, and/or Appendices hereto. Client agrees to pay amounts due in U.S. dollars. All taxes and governmental charges that may be applicable to any Deliverables shall be paid by Client. Payment of all invoices shall be due within thirty (30) days of the invoice date. Client agrees to pay a late charge in the amount of one and one-half percent (1.5%) per month, or the highest interest rate permitted by law, whichever is lower, on the unpaid balance of any invoice from Parsec beginning from the thirtieth (30<sup>th</sup>) day after the date of such invoice.
- 4.3. **Other Fees.** Parsec agrees to invoice Client on a monthly basis, at Parsec's rates as provided in Parsec's then-current rate card, for any services and/or maintenance requested, other than those specified in this Agreement or any Sales Order(s),

Appendix, or Appendices hereto, and for any accrued but unpaid charges. Any such service and/or maintenance shall be subject to the same protections and restrictions in this Agreement that are applicable to any other Deliverables, unless otherwise agreed by the parties in writing. Parsec reserves the right to update its rate-card rates at its discretion and will inform Client of the rate-card rate update pursuant to Section 11.9 of this Agreement. After providing the updated rate-card, Parsec's rate will be governed by the updated rate-card.

#### 4.4. Delay.

4.4.1. **Caused by Client:** In the event that any Deliverable is delayed due to Client's breach of its obligations under this Agreement or its failure to timely supply Parsec with necessary information or materials, and such delay exceeds sixty (60) days, Parsec may elect to invoice Client on a monthly basis for services performed as provided in Parsec's then-current applicable rate card. The preceding remedy shall be available to Parsec in addition to any other available remedy.

4.4.2. **Caused by Parsec:** In the event that any Deliverable is delayed due to Parsec's breach of its obligations, Parsec will not bill for any Deliverables ordered but not fulfilled. Delay of the initial services is also grounds for termination as defined in 5.2.

### 5. Term and Termination.

5.1. **Term.** This Agreement shall be effective as of the Effective Date of the Agreement (initial term) and shall continue until termination. This Agreement shall remain in effect so long as one or more any Sales Order(s), Appendix, or Appendices are in effect.

5.2. **Termination.** Either party shall have the right to terminate this Agreement in the event: (i) the other party fails to comply with any of the terms and conditions of this Agreement and such default has not been cured within thirty (30) days after written notice sent in accordance with Section 11.9 of this Agreement of such default to the other party; or (ii) the other party (A) terminates or suspends its business, (B) becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute, (C) becomes insolvent or subject to direct control by a trustee, receiver or similar authority, or (D) has wound up or liquidated, voluntarily or otherwise. Client may terminate the Agreement if Parsec is delayed in fulfilling deliverables for more than thirty (30) days from the mutually agreed initial delivery date as defined in 4.4. In addition to the foregoing, Parsec may terminate this Agreement immediately upon written notice (i) if Client breaches the AUP or Confidentiality terms, or (ii) if Client is 45 days or more past due on any payments owed Parsec.

5.3. **Renewal.** This Agreement shall continue for the Initial Term stipulated on any Sales Order Form, and unless terminated as provided in this Agreement, shall automatically renew for additional successive twelve (12) month Terms. At least 60 days prior to the expiration of the Initial Term or at least 60 days prior to the expiration of any renewal Term, either Party may give written notice of nonrenewal and termination to the other Party at the other Party's Notice Address provided in Section 3.1 and subject to Section 11.9, if the party does not wish to renew this Agreement in respect of such

Service, subject in all cases to earlier termination as defined in 5.2. Absent timely notice of termination, all Deliverables shall continue in force unless terminated as defined in 5.2.

- 5.4. **No Liability for Termination.** Parsec shall not incur any liability or compensation obligation whatsoever for any damage (including, without limitation, damage to or loss of goodwill or investment), loss or expenses of any kind suffered or incurred by Client arising from or relating to any termination of this Agreement pursuant to the terms hereof.
- 5.5. **No Refunds.** No refunds of prepaid amounts will be given for early termination by client.
- 5.6 **Effect of Termination.** The rights and obligations of Parsec and Client regarding confidentiality, indemnity, and ownership shall survive termination of this Agreement. All other rights and obligations of the parties, including all services, shall terminate immediately upon any termination of this Agreement, other than rights and obligations that have accrued prior to termination. Nothing contained herein shall limit any remedies that Parsec may have for default of Client under this Agreement nor relieve Client of any of its obligations incurred prior to such termination. Upon termination, the client is responsible for removal and retrieval of all copies of client data stored on Parsec Infrastructure.
- 5.7. **Limitation of Liability upon Termination.** IN THE EVENT OF TERMINATION OF THIS AGREEMENT, OR OF SUSPENSION OR TERMINATION OF ACCESS TO ANY SERVICES OR DATA PURSUANT TO THIS AGREEMENT OR ANY SALES ORDER(S), APPENDIX, OR ADDENDUM HERETO, PARSEC SHALL HAVE NO FURTHER DUTY TO MAINTAIN ANY DELIVERABLES UPON ANY PARSEC INFRASTRUCTURE, AND PARSEC SHALL NOT BE LIABLE TO CLIENT BECAUSE OF SUCH TERMINATION OR SUSPENSION FOR COMPENSATION, REIMBURSEMENT OR DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO INCIDENTAL AND CONSEQUENTIAL DAMAGES. THE PARTIES ACKNOWLEDGE THAT THIS SUBSECTION HAS BEEN INCLUDED AS A MATERIAL INDUCEMENT FOR PARSEC TO ENTER INTO THIS AGREEMENT, THAT PARSEC WOULD NOT HAVE ENTERED INTO THIS AGREEMENT BUT FOR THE LIMITATION OF LIABILITY AS SET FORTH HEREIN, AND THAT THIS LIMITATION OF LIABILITY IS **INTENDED TO BE IN ADDITION** TO ANY OTHER LIMITATION OF LIABILITY IN THIS AGREEMENT.

## 6. Ownership

- 6.1. **Intellectual Property.** Parsec owns and shall retain all right, title and interest (including, without limitation, all Intellectual Property Rights), in and to the network and any corrections, enhancements, updates or other modifications thereto, whether made by Client, Parsec or any third party. Client acknowledges that the services granted under this Agreement does not provide Client with title to or ownership of the network, but only a right of limited use under the terms and conditions of this Agreement. Client retains right to all Client data, Client software and Client system

elements developed and provided by Client for hosting on Parsec systems. Parsec acknowledges no title or ownership to Client provided elements.

- 6.2. **Parsec Materials.** Except as expressly provided otherwise in this Agreement, Parsec shall own all Deliverables and any other materials developed by Parsec in the course of providing Deliverables (collectively, "Parsec Materials"). Subject to Parsec's receipt of all applicable fees, Parsec grants to Client a nonexclusive, nontransferable license to use Parsec Materials during the term of this Agreement and in accordance with its terms and conditions. Client shall not use the Parsec Materials other than in conjunction with the use of the Deliverables or Website as provided herein. Client shall not modify, adapt, reproduce, distribute, resell, retransmit, merge with any other program, prepare derivative works based on, demonstrate, translate, or reverse engineer, decompile, disassemble or otherwise attempt to derive source code from any Parsec Materials, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation, and then only after first giving Parsec written notice at Parsec's notice address set forth in Section 3.1 and subject to the provisions of paragraph 11.9 of its intention to engage in such activity within one month thereof to permit Parsec to determine for itself beforehand if such activity is so permitted. Client expressly agrees that it shall not loan, rent, lease, transfer, sublicense, distribute, market, or grant to any third parties any Parsec Materials or any rights therein or thereto, or make the Parsec Materials available to any third party in connection with any time-sharing, service bureau, data processing, or similar arrangement. Client will take all steps necessary to protect Parsec's proprietary rights in Parsec Materials, including but not limited to the proper display of copyright, trademark, trade secret and other proprietary notices on any copies of the Parsec Materials.
- 6.3. **No Transfer Until Payment Received.** All Deliverables that would otherwise become the property of Client shall remain the property of Parsec until all payments related thereto have been received by Parsec.

## 7. Confidentiality

- 7.1. **Confidential Information.** Parsec and Client (singularly "Party" or together "Parties") agree that any information exchanged between Client and Parsec under this agreement remains confidential information. This includes all data that is transmitted to and from Parsec's servers and information that Client stores on Parsec's servers. It also includes, but is not limited to, the provisions of this Agreement, Sales Order(s), Appendices, and pricing related to this Agreement. During the period this Agreement is in effect and for three (3) years after its termination, both Parties and their employees and agents shall maintain the confidentiality of this information and shall not sell, license, sublicense, publish, display, distribute, disclose or otherwise make available this information to any third party nor use such information except as authorized by this Agreement. Neither Party shall disclose any such information concerning the price or terms of service to persons not an employee of Client or Parsec without prior written consent from the other Party. The Parties agree that they will take appropriate action by instruction, agreement and otherwise with their respective employees and agents to satisfy its obligations under this Agreement with respect to use, protection and security of confidential information. The Parties agree to

immediately notify the other Party of unauthorized disclosure or use of any of this confidential information and to assist in remedying such unauthorized use or disclosure of confidential information. Each Party shall be entitled to disclose the existence of this Agreement, but Parties agree that the terms and conditions of this Agreement shall be confidential information. It is further understood and agreed that money damages may not be a sufficient remedy in the event of any breach of obligations under this Section, and that in the event of any such breach, the affected Party shall be entitled to seek injunctive relief, in addition to any other rights or remedies provided by law. Confidential information does not include information that (a) was available to the public through no fault of recipient, or (b) recipient already possessed prior to receipt from Discloser, or (c) recipient acquired from a third party without obligation of confidence, or (d) was independently developed by or for recipient.

## **8. Indemnification, Limitation of Liability and Warranty Disclaimer.**

**8.1. Indemnification.** Client agrees to indemnify, defend and hold Parsec and its subsidiaries, affiliates, and the respective officers, directors, agents, advisors, partners, sponsors, employees and independent contractors of each harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of content, data, materials or information Client submits, posts to or transmits to or through Parsec's network, Client's use of the network or reliance upon any materials provided through Parsec's network, or Client's violation of the terms and conditions set forth herein, or Client's use or disclosure of any content, data, materials or other confidential information received through Parsec, Client's negligence, omissions or misconduct, Client's violation of any rights of another party, or Client's participation in or conducting of any transaction (or failure to conduct or complete a transaction) through Parsec's network. Parsec agrees to indemnify, defend and hold Client and its subsidiaries, affiliates, and the respective officers, directors, agents, advisors, partners, sponsors, employees and independent contractors of each harmless from any claim or demand, including reasonable attorneys' fees, arising out of Parsec's negligence, omissions, misconduct or breach of this agreement. This provision shall survive the expiration or termination of this Agreement.

**8.2. Disclaimer of Warranty.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, PARSEC HEREBY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE AND NONINFRINGEMENT. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO CLIENT.

**8.3. Limitation of Liability.** PARSEC'S ENTIRE LIABILITY AND CLIENT'S EXCLUSIVE REMEDY FOR DAMAGES UNDER THIS AGREEMENT WILL BE LIMITED TO THE TOTAL COMPENSATION PAID BY CLIENT TO PARSEC HEREUNDER DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT FROM WHICH SUCH LIABILITY ARISES. CLIENT ACKNOWLEDGES AND

AGREES THAT THIS LIMITATION OF LIABILITY IS A MATERIAL TERM OF THIS AGREEMENT, THAT THE PRICE OF THE DELIVERABLES PROVIDED HEREUNDER IS PREDICATED ON THE ENFORCEABILITY OF THE FOREGOING LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES, AND THAT THE PRICE WOULD BE SUBSTANTIALLY HIGHER IF PARSEC COULD NOT LIMIT ITS LIABILITY AND DISCLAIM WARRANTIES AS PROVIDED HEREIN. THIS LIMITATION OF LIABILITY SHALL APPLY NOTWITHSTANDING ANY FAILURE OF AN ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. CLIENT AGREES THAT ANY EFFORTS BY PARSEC TO MODIFY ANY DELIVERABLES SHALL NOT BE DEEMED A WAIVER OF THESE LIMITATIONS. SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, AND THUS SOME PORTION OF THE LIMITATIONS DESCRIBED ABOVE MAY NOT APPLY TO CLIENT. IN SUCH JURISDICTIONS, PARSEC'S LIABILITY IS LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

8.4. **Third Party Beneficiaries.** Each party shall be liable only to the other. Each party expressly disclaims any liability to or for the benefit of any other third parties.

## 9. Acceptable Use Policy (AUP)

- 9.1. Parsec publishes an Acceptable Use Policy, which is attached as Appendix B to this Agreement.
- 9.2. The Client must comply with the Acceptable Use Policy at all times during the Term.
- 9.3. Parsec may change the Acceptable Use Policy from time to time at Parsec's discretion and Parsec will give the Client no less than fourteen (14) days of notice of such change and thereafter the Client must comply with the Acceptable Use Policy as changed. Parsec will not make changes to the Acceptable Use Policy that are unreasonable or that undermine the purpose of this Agreement.

## 10. Service Level Agreement (SLA)

- 10.1. Parsec publishes a Service Level Agreement which is attached hereto as Appendix C to this Agreement.
- 10.2. Parsec may change the Service Level Agreement from time to time at Parsec's discretion and the updated SLA will go into effect as defined in the Renewal paragraph in section 5.3 of the Agreement or upon the execution of any subsequent Sales Order.

## 11. Miscellaneous

- 11.1. **Survival.** Those provisions of this Agreement that by their terms, nature, or sense survive any termination or expiration of this Agreement shall so survive in accordance with their terms, **including but not limited to Sections 4, 5, 6 and 7.**
- 11.2. **Assignment; Benefit.** Client shall not assign (directly, by operation of law or otherwise) this Agreement or any of its rights under this Agreement without the prior

written consent of Parsec. This Agreement will inure to the benefit of and be binding on the parties, their heirs, personal representatives, successors, and permitted assigns.

- 11.3. **Force Majeure.** With the exception of Client's payment obligations, neither party shall be liable for failure to comply with any of the terms of this Agreement to the extent that such failure was caused by fire, flood, earthquake, storm damage, war, insurrection, government restrictions, telecommunications outages, Internet outages, power outages, force majeure, or other causes beyond that party's reasonable control.
- 11.4. **Applicable Law; Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of Montana, without regard to its choice of law rules. The exclusive venue for any action under this Agreement shall be in Yellowstone County, State of Montana, and Client agrees to accept the personal jurisdiction of such courts.
- 11.5. **Captions.** Section headings have been included in the Agreement merely for convenience of reference. They are not considered part of this Agreement, or to be used in the interpretation thereof.
- 11.6. **Severability.** In the event that any court of competent jurisdiction determines that any provision of this Agreement is unreasonable or unenforceable for any reason, it is the intention of the parties that said provision be enforced to the fullest extent permitted by law, that the Agreement shall thereby be reformed, and that in any event the remaining provisions of this Agreement shall remain in full force and effect.
- 11.7. **Complete Agreement.** This Agreement is the entire agreement between the parties, and it supersedes any and all prior or contemporaneous communications, representations, proposals, agreements and understandings between the parties. ANY ADDITIONAL OR DIFFERENT TERM WHICH MAY APPEAR IN ANY PURCHASE ORDER, CONFIRMATION OR OTHER DOCUMENT ORIGINATING WITH CLIENT IS HEREBY OBJECTED TO AND REJECTED, AND TO THE EXTENT THAT THERE IS ANY CONFLICT BETWEEN ANY SUCH TERM AND ANY TERM OF THIS AGREEMENT, THE APPLICABLE TERM OF THIS AGREEMENT SHALL CONTROL.
- 11.8. **Modification.** No modification, amendment, or discharge of the Agreement (including but not limited to any change orders) will be valid unless it is in writing and duly executed by both parties.
- 11.9. **Notices.** Any notices under this Agreement shall be deemed given when delivered, if delivered in person, or sent via facsimile or electronic mail (with confirmation of receipt), overnight courier, or certified or registered mail (postage prepaid) to the other party at the address set forth below. Either party may, by notice in writing to the other party, change the address to which notices to that party are to be given.
- 11.10. **Contact Person.** The principal contact person whose name is set forth on the signature page of this Agreement shall act as a liaison between Parsec and Client and shall have sufficient authority to grant or communicate the granting of all necessary approvals. The respective contact person may be substituted by either party by written notice to the other party.

- 11.11. **Waiver.** No failure or delay by either party in exercising any right, power or remedy hereunder shall operate as a waiver thereof. The waiver by one party of the breach of any provision of this Agreement by the other party will not operate or be construed as a waiver of any subsequent breach by that party or any other provisions of this Agreement.
- 11.12. **Attorneys' Fees.** In the event an action, including arbitration, if any, is brought to enforce any provision of, or to declare a breach of, this Agreement, the prevailing party shall be entitled to recover, in addition to any other amounts awarded, reasonable legal costs, including the attorneys' fees incurred by the prevailing party.
- 11.13. **Remedies Not Exclusive.** The remedies provided for in this Agreement at law or in equity are cumulative, not exclusive. The election of one or more such remedies by a party does not constitute a waiver of that party's right to pursue other remedies.
- 11.14. **No Agency or Joint Venture.** This Agreement shall not be deemed to create a partnership or joint venture or other relationship other than that of contracting parties.