LYNX
SOFTWARE TECHNOLOGIES

Master Services Agreement

This Master Services Agreement is a legal agreement between the customer identified in one or more ordering documents signed by the customer ("you" or "Customer") and Lynx Software Technologies, Inc. ("Lynx") and sets forth the terms and conditions under which Lynx will perform certain services relating to the installation, implementation and/or integration of the software ("Software") licensed by Customer under a separate Software License Agreement ("License Agreement"). Each entity may also be referred to individually as "Party" and collectively as "Parties." Please read the following binding terms and conditions of this agreement before accepting the services. If you do not want to be bound by the terms and conditions of this agreement, you should not accept the services. By clicking on the "accept" button, signing an associated Order Form, or issuing a purchase order, you agree to the following terms and conditions on behalf of the Customer. If you are entering into this agreement on behalf of your employer or another legal entity, then you represent and warrant that you have the authority to bind that entity as the Customer. Lynx may amend this agreement from time to time by posting an amended version at its website and sending Customer notice thereof (an email to Customer's designated contact shall be deemed sufficient in this case). Such amendment will be deemed accepted and become effective thirty (30) days after such notice (the "Proposed Amendment Date") unless Customer first gives Lynx written notice of rejection of the amendment. In the event of such rejection, this agreement will continue in its existing form. Customer's continued acceptance of the services following the Proposed Amendment Date will confirm Customer's consent thereto.

1. **<u>Services</u>**:

   a. Lynx agrees to perform the services as described in the Statement of Work ("SOW") referencing this Agreement or such additional SOWs entered into by the Parties that reference this Agreement.

   b. If the services are being performed under a Block of Time SOW, then Lynx shall keep a record of the number of hours used against the number of hours purchased by Customer. Upon request by Customer, Lynx shall provide a report of the hours used. Customer must utilize all purchased hours on or before twelve (12) months from the SOW's Effective Date (the "Validity Period"). Upon expiration of the Validity Period, Customer may no longer utilize any unused hours. If Customer wishes to engage Lynx's services after the Validity Period has expired, Customer must purchase additional hours under a new Purchase Order.

   c. Customer understands that Lynx's performance is dependent in part on Customer's actions. Accordingly, any dates or time periods relevant to performance by Lynx hereunder shall be appropriately and equitably extended to account for any delays resulting from changes to Customer's IT infrastructure or any other delays due to Customer's actions or inactions. No modifications to a Statement of Work will be made without the prior written approval of an authorized representative of Customer and Lynx. If at any time Lynx anticipates that it will not reach any milestones or assignments within agreed or estimated timescales, Lynx will inform Customer and will submit proposed

revisions to the timescales and milestones and the parties will discuss in good faith any necessary changes to the SOW.

2. **Acceptance**: Customer's acceptance of the Work shall be based on the acceptance criteria as described in the SOW or, if none are stated, upon Lynx's completion and delivery of the final Services, Work Product or Deliverable specified in the SOW.

3. **Payment**: Customer agrees to pay Lynx according to the terms and conditions as described in the SOW.

4. Term and Termination:

    a. This Agreement is effective as of the Effective Date and, unless terminated earlier in accordance with the terms of this Agreement, shall expire three (3) years from the Effective Date or upon completion of all work being performed by Lynx pursuant to a SOW, whichever is later.

    b. If either Party defaults in the performance of any of its material obligations hereunder, is notified in writing of such default by the non-defaulting Party, and if any such default is not corrected within thirty (30) calendar days after such notice has been given to the defaulting Party, the non-defaulting Party, at its option, may terminate this Agreement.

    c. This Agreement may be terminated by a Party on notice: (i) that the other Party to the Agreement is insolvent, in receivership or bankruptcy proceedings, or any other proceedings for the settlement of its debts, (ii) upon the institution of such proceedings against the Party that are not dismissed or otherwise resolved in its favor within sixty (60) days thereafter, (iii) upon the Party's making a general assignment for the benefit of creditors, or (iv) upon the Party's dissolution or ceasing to conduct business.

5. **Ownership of Intellectual Property and Work Product**:

    a. "Intellectual Property" or "IP" means inventions, discoveries and improvements, know-how, technical data, copyrightable materials, copyrights, service marks, trademarks, trade names, drawings, specifications, process information, reports and documented information, computer software, patents, industrial designs, trade secrets, mask work registrations, and the like.

    b. All IP conceived, originated, created or first reduced to practice by or for Lynx prior to the Effective Date and all IP developed, conceived, obtained or acquired independently of this Agreement and any IP relating to the Software or Lynx Confidential Information ("Lynx Background IP") shall remain the property of Lynx. Further, all work product and deliverables developed in the course of Lynx's provision of the Services hereunder ("Work Product"), including without limitation any modifications to, additions to, updates to or improvements on Lynx Background IP made pursuant to this Agreement shall remain the property of Lynx. Any such Work Product that consists of Software shall be deemed licensed to Customer under the terms and conditions of the License Agreement.

c. All new IP created pursuant to this Agreement ("Foreground IP") shall be owned by Lynx.

d. All IP conceived, originated created or first reduced to practice by or for Customer prior to the Effective Date and all IP developed, conceived, obtained or acquired by Customer independently of this Agreement ("Customer Background IP") shall remain the property of Customer.

e. Customer acknowledges and agrees that, except as provided above, no right, title or interest whatsoever (express or implied) in or to any IP, documentation, ideas, concepts, know how, data processing or other techniques used or developed by Lynx personnel (either alone or jointly with the Customer) in connection with the performance of the Services hereunder is transferred or granted by Lynx to Customer.

6. **Confidentiality**:

a. Definition of Confidential Information. During the performance of the services as described in the Statement of Work, the Parties may acquire or have access to confidential information from and about each other, including information about software, products and services ("Confidential Information"). The Party receiving such Confidential Information ("Receiving Party") acknowledges that the Confidential Information is proprietary to the Party disclosing such Confidential Information ("Disclosing Party"), has been developed and obtained through great efforts by the Disclosing Party, and that the Disclosing Party regards all of its Confidential Information as trade secrets. Confidential Information means any data or information that is proprietary to the Disclosing Party, and is not generally known to the public, whether in tangible or intangible form, whenever and however disclosed, including, but not limited to:

   i. any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method;
   ii. any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets;
   iii. any marketing strategies, plans, financial information, or projections, operations, sales estimates, business plans and performance results relating to the past, present or future business activities of the Disclosing Party, its affiliates, subsidiaries and affiliated companies;
   iv. plans for products or services, and customer or supplier lists; and
   v. any other information that should reasonably be recognized as confidential information of the Disclosing Party. Confidential Information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information.

b. The Receiving Party acknowledges the Disclosing Party's exclusive ownership and control of the Confidential Information, and agrees to keep all Confidential Information confidential and not to use the Confidential Information in any way, except as required in accordance with this Agreement.

    c.   The Receiving Party shall maintain Confidential Information in confidence by taking such measures as it takes to protect its own confidential information of like kind, and in any event, shall exercise a reasonable degree of care when protecting the Confidential Information. The Receiving Party shall not disclose Confidential Information to any third party without the express written authorization of the Disclosing Party.

    d.   The obligations set forth in Sections (a) through (c) above will not apply if, but only to the extent that, Confidential Information:

        i.   was in the public domain at the time it was disclosed or has come into the public domain through no fault of the Receiving Party;

        ii.   was known to the Receiving Party, without restriction, at the time of disclosure, as demonstrated by the Receiving Party's records;

        iii.   was independently developed by the Receiving Party without use of or reliance upon the Confidential Information, as proven by written documentation;

        iv.   becomes rightfully known to the Receiving Party from a third-party source not known (after diligent inquiry) by the Receiving Party to be under an obligation to the Disclosing Party to maintain confidentiality; or

        v.   is required to be disclosed by the Receiving Party by statute, court of law or other legal process, in which case the Receiving Party shall, as promptly as possible, and before making the disclosure, notify the Disclosing Party of its requirement to make the disclosure to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure.

    e.   Receiving Party hereby acknowledges and agrees that in the event of a breach of these confidentiality obligations, including, without limitation, the actual or threatened disclosure or unauthorized use of the Disclosing Party's Confidential Information without Disclosing Party's prior express written consent, the Disclosing Party may suffer an irreparable injury, such that no remedy at law will afford it adequate protection against, or appropriate compensation for, such injury. Accordingly, the Receiving Party hereby agrees that in the event of a breach of its obligations hereunder the Disclosing Party may be entitled to equitable relief, including but not limited to specific performance of the Receiving Party's obligations under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction.

    f.   This clause shall survive termination or lapse of this Agreement.

7. **<u>Warranty and Disclaimer</u>**: Lynx warrants that the Services under this Agreement will be performed in a professional and workman-like manner in accordance with the Statement of Work. OTHERWISE, EXCEPT FOR THE WARRANTY FOR THE SOFTWARE MADE IN THE RELEVANT SOFTWARE LICENSE AGREEMENT, LYNX PROVIDES INFORMATION, WORK PRODUCT AND SERVICES "AS IS." LYNX DOES NOT WARRANT THE RESULTS OR THE PERFORMANCE OF THE SERVICES ON ANY PROJECTS, EQUIPMENT OR APPLICATIONS NOT SUPPLIED BY LYNX. LYNX MAKES AND CUSTOMER RECEIVES NO WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE; AND LYNX SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

8. **<u>Limitation of Liability</u>**: LYNX'S LIABILITY ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER TO LYNX FOR THE

SERVICES IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. IN NO EVENT SHALL LYNX BE LIABLE FOR ANY LOSS OF DATA, LOST OPPORTUNITY OR PROFITS, COST OF COVER, OR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES OR FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY WHETHER IN TORT OR CONTRACT OR OTHERWISE, ARISING OUT OF THIS AGREEMENT. THESE LIMITATIONS WILL APPLY EVEN IF LYNX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9. **Governing Law and Jurisdiction**: This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, USA, without reference to its conflict of laws principles. Any arbitration or litigation between the Parties relating to this Agreement shall take place in Santa Clara County, California, USA; both parties waive any objection to personal jurisdiction or venue in any forum located in that County.

10. **Severability**: If any provision in this Agreement shall be found or be held to be invalid or unenforceable in any jurisdiction in which this Agreement is being performed, then the meaning of said provision shall be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of this Agreement, which shall remain in full force and effect. In such event, the parties shall negotiate, in good faith, a substitute, valid and enforceable provision, which most nearly effects the Parties' intent in entering into this Agreement.

11. **Relationship of the Parties**: Each of the Parties to this Agreement are independent entities. Nothing in this Agreement is intended to create, nor shall be construed to create, a partnership, agency, joint venture, co-ownership, or otherwise as participants in a joint undertaking. Lynx and Customer do not have any right or authority to create any obligation, or responsibility, express or implied, on behalf of the other Party in any manner whatsoever. Neither Party shall make any representations, warranties or guarantees on behalf of the other Party.

12. **No Hiring of Employees**. Customer agrees that during the term of this Agreement, including extensions or modifications thereto, and for an additional 12 (twelve) months following this period, Customer shall not actively recruit, or solicit employees, or consultants of Lynx. This clause does not prohibit any employee or consultant from responding to or pursuing employment opportunities through normal media channels, i.e. newspapers, professional journals, websites, etc., as long as such action is not an attempt to circumvent the intent of this clause.

13. **Export Control**: Customer and its agents and employees shall only disclose, transfer, export, or re-export, directly or indirectly, any software, technology (or direct products thereof) provided under this Agreement in compliance with U.S. Export Administration Regulations and/or any foreign government export control laws. Customer's failure to comply with this provision is a material breach of this Agreement. This clause will survive termination or lapse of this Agreement.

14. **Modification**: No alteration, amendment, waiver, cancellation or any other changes in any term or condition of this Agreement shall be valid or binding on either Party unless the same shall have been mutually agreed to in writing by both Parties.

15. **Waiver**: The failure of either Party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other Party of any of the provisions of this Agreement, will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the right of either Party to enforce each and every such provision thereafter. The express waiver by either Party of any provision, condition or requirement of this Agreement will not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

16. **Assignment**: This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective assigns; provided, however, that neither Party shall assign any of its rights, obligations, or privileges (by operation of law or otherwise) hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement to a successor in interest (or its equivalent) of all or substantially all of its assets, whether by sale, merger, or otherwise.

17. **Dispute Resolution**: The parties will attempt to settle any claim or controversy arising out of this Agreement through good faith negotiations and mutual cooperation. If those attempts fail, then the dispute will be first submitted to a mutually acceptable neutral advisor for mediation. Neither Party may unreasonably withhold acceptance of such an advisor. Selection of the advisor shall be made within forty-five (45) days after written notice by one Party demanding such resolution. The cost of such mediation shall be shared equally by both Parties. Any dispute, which cannot be resolved between the parties within one hundred eighty (180) days of the date of the initial demand by either Party for such mediation, shall be finally determined by the courts. The use of such a procedure shall not be construed to affect adversely the rights of either Party under the doctrines of laches, waiver or estoppel. Nothing in this paragraph shall prevent either Party from resorting to judicial proceedings if: (i) good faith efforts to resolve a dispute under these procedures have been unsuccessful; or (ii) interim resort to a court is necessary to prevent serious and irreparable injury to a Party or to others. This section shall not apply to claims or disputes relating to Intellectual Property rights.

18. **Force Majeure**: Neither Party shall be liable to the other for its failure to perform any of its obligations under this Agreement, except for payment obligations, during any period in which such performance is delayed because rendered impracticable or impossible due to circumstances beyond its reasonable control, and without that Party's fault or negligence, including but not limited to, acts of God or of the public enemy, acts of any Government authority, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, freights embargoes, or unusually severe weather. The Party experiencing the delay shall promptly notify the other of the delay.

19. **Notices**: Any notice required or permitted to be given by either Party under this Agreement shall be in writing and shall be personally delivered or sent by certified or registered letter (airmail if international), or by electronic means, that is fax or e-mail, if acknowledged in writing by the other Party and followed up with original documents, to the other Party at its address first set forth above, or such new address as may be supplied from time to time by the Parties hereto. If mailed, notices will be deemed effective seven (7) working days after deposit, postage prepaid, in the mail. If sent by fax or e-mail, will be deemed effective upon acknowledgement.

20. **Execution of Agreement**: This Agreement may be executed in one or more counterparts, which together constitute one and the same instrument, and may be executed by facsimile or digital signature, each of which shall be deemed original signatures.

21. **Survival**: The following sections will survive any expiration or termination of this Agreement or any SOW: any obligation of Customer to pay for Software used or services rendered before termination; Section 5, Ownership of IP and Work Product; Section 6, Confidentiality; Section 7, Warranty and Disclaimer; Section 8, Limitation of Liability; and any other provision of this Agreement that must survive to fulfill its essential purpose.

22. **Order of Precedence**: In the event of a conflict between a provision in this Agreement and a provision in a SOW, the provision in this Agreement shall prevail.

23. **Headings**: Headings in this Agreement are included for reference purposes only and are not to be considered in construing or interpreting this Agreement.

24. **Entire Agreement**: The terms and conditions herein contain and constitute the entire agreement between the parties and supersede all previous agreements and understandings, whether oral or written, between the Parties with respect to the subject matter of this Agreement.