

## MASTER SERVICES AGREEMENT (MSA) STANDARD TERMS & CONDITIONS

DAVENPORT GROUP MASTER SERVICES AGREEMENT (“MSA”) is entered into by and between Davenport Group, Inc. (“Davenport Group”), located at 104 Belfast Street, Lewisburg, TN 37091 and City of Broken Arrow, OK (“Client”), located at PO Box 610, Broken Arrow, OK 74013 is effective as of the date April 9, 2024.

This Agreement applies to all sales orders (each an “Order”) entered into by the parties regarding work to be provided by Davenport Group to Client. Each Order shall be included as an exhibit to this Agreement. Work performed by Davenport Group on behalf of Client in any such Order will be identified as “Services”. Specific Services are subject to additional terms and conditions (“Service Addendums”) which shall be included as an addendum to this Agreement.

### 1. **Service Orders.**

- 1.1 Client and Davenport Group shall enter into Orders for Services for the term of this MSA. Each Order issued under this Agreement shall include; (i) the Services to be provided to Client; (ii) the location where the Services are to be performed; (iii) the performance schedule for Services; (iv) the compensation to be paid to Davenport Group and a payment schedule for such Services; (v) the term of the engagement (if applicable); (vi) any other specifications deemed relevant by Client and Davenport Group.
- 1.2 If stated Services are subject to a Service Addendum, the Order shall reference the applicable Service Addendum.
- 1.3 No Order shall be binding upon either party unless executed by both parties. The parties agree and acknowledge that neither party shall have any obligation under an unexecuted Order and that Davenport Group shall not be obligated to provide any services not listed in an Order.

### 2. **Modifications and Additional Services.**

- 2.1 In the event that Client requests that Davenport Group provide additional services not described in the Order (collectively “Additional Services”) such Additional Services shall be agreed to in a change order (“Change Order”) which shall include the Services to be performed and the additional compensation for the Additional Services.
- 2.2 Davenport Group shall not be obligated to perform any Additional Services unless both parties have executed a Change Order covering the Additional Services.

### 3. **Fees and Invoices.**

- 3.1 The fees for all Services performed by Davenport Group for Client are billed at a rate of \$400 USD per hour. All work performed outside of standard business hours 8:00AM – 5:00PM Monday – Friday are billed at a rate of \$500 USD per hour.
- 3.2 After the first anniversary of the signature dates below, Davenport Group reserves the right to change this hourly rate fee by notifying Client by electronic mail 30 days prior to such changes becoming effective.
- 3.3 Except as otherwise specified in the Order, all one-time fees shall be due prior to the commencement of Services, all recurring fees due under an Order shall be billed on the fifteenth (15<sup>th</sup>) day of the month prior to service, and all hourly billing is billed at the end of each month. Client recognizes that the time is committed by Davenport Group and fees are due regardless of time used. In the event Client fails to pay any fees within fifteen (15) days of invoice due date, such outstanding amounts shall be subject to a finance charge equal to the maximum rate of interest allowed by law, on the past due amounts.
- 3.4 ***Additional addenda to this Agreement may offer special project rates or fixed fees that are different but apply only to the scope of work defined in such addendums.***

### 4. **Term and Termination.**

- 4.1 **Term.** The Term of this Agreement shall be for the entire period of time that Davenport Group is providing Services to Client under an Order ("Term"). For any ongoing service addendums, the Term shall be for a period of three (3) years unless a different Term is stated in the Order. Upon the completion of the initial term, the term shall automatically renew for subsequent renewal terms equal to the initial term unless terminated by either party within thirty (30) days' written notice prior to the renewal date said initial term and all renewals shall be subject to annual appropriations.
- 4.2 **Termination after Breach.** Either party may terminate any Order or this Agreement if the other party materially breaches a term of this Agreement and fails to cure such breach (if capable of being cured) within (i) fifteen (15) days after receiving written notice of the breach for monetary breaches, or (ii) thirty (30) days after receiving written notice of the breach for non-monetary breaches, provided, however, in the case of a non-monetary breach that cannot with due diligence be cured within such thirty (30) day period, if the breaching party proceeds as promptly as may be reasonably

possible and with all due diligence to cure the breach, the period of time in which the breaching party may cure shall be extended as necessary to cure such breach, but in no event shall such time period extend beyond a period of thirty (30) days after the breaching party's receipt of written notice of the breach without the written agreement of both parties.

4.3 **Automatic Termination.** This Agreement shall all terminate automatically, without the giving of notice, and all fees for the Term shall become immediately payable in the event that Client: (i) ceases business operations; (ii) becomes insolvent; (iii) files a voluntary petition in bankruptcy (excluding reorganization); (iv) is adjudicated as bankrupt pursuant to an involuntary petition; or (v) suffers appointment of a temporary or permanent receiver, trustee, or custodian for all or a substantial part of its assets.

4.4 **Suspension of Services.** In addition to the termination rights above, Davenport Group may suspend performance of some or all of the unperformed Services in the event Client fails to pay any undisputed amount within fifteen (15) days after the date payment is due pursuant to the Order or delivered invoice, at the option of Davenport Group. Fees shall continue to accrue and are fully payable during this suspension.

4.5 **Effect of Termination.** If this Agreement is terminated for any reason, Client shall unconditionally and immediately pay Davenport Group for all work completed and invoiced up until the date of termination ("Termination Date"), it being understood that the parties shall negotiate in good faith to determine the percentage of the Services completed as of the Termination Date, and the corresponding amount due from Client to Davenport Group (e.g., if Davenport Group provided Services for which Client has not yet paid), as applicable. If this Agreement is terminated as a result of Client's breach or if Client attempts termination early without cause, then if an Order of work provides for a guaranteed term of engagement (for example, a one (1) year period), the balance of fees for such term shall be immediately payable in full.

## 5. **Proprietary Information.**

5.1 **New Developments; Davenport Group Materials.** As between Davenport Group and Client, (i) all ideas, concepts, inventions, and improvements coming within the scope of Davenport Group's business, conceived by Davenport Group's employees or independent contractors alone or with Client or Client's employees or independent contractors in connection with the provision of Services and (ii) all software, trade secrets, know-how, tools, methodologies, and processes related to the Services, including, without limitation, all copyrights, trademarks, trade names, and other proprietary

rights inherent therein or appurtenant thereto (collectively, the “Davenport Group Materials”) shall be the sole and exclusive property of Davenport Group.

5.2 **Davenport Group’s Equipment.** In the event that Davenport Group provides any equipment under an Order (“Davenport Group Equipment”), Client shall not move, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Davenport Group Equipment or permit others to do so. Client shall not use the Davenport Group Equipment for any purpose other than what is authorized by the Order. Client is responsible for any damage to, or loss of, Davenport Group Equipment caused by its acts or omissions, or by fire, theft, or other casualty. Upon termination or expiration of this Agreement and/or any applicable Order, Client shall be responsible for the return of all applicable Davenport Group Equipment or may purchase the Davenport Group Equipment from Davenport Group at its retail price. Until such time as the Davenport Group Equipment is returned to Davenport Group, Davenport Group may continue to invoice Client for the monthly fee applicable to such Davenport Group Equipment. If any returned Davenport Group Equipment has been damaged and/or destroyed, Davenport Group may, in its sole discretion, invoice for the replacement cost of such Davenport Group Equipment.

5.3 **Third-Party Software.** If an Order includes the use of third-party software (“Software”), Client shall have a nonexclusive, nontransferable, and limited license to use such Software only and solely to the extent necessary to use the applicable Services during the corresponding term. Client may not claim title to, or an ownership interest in, any Software (or any derivations or improvements thereto), and Client shall execute any documentation reasonably required by Davenport Group, including, without limitation, end-user license agreements for the Software. Customer shall not: (i) copy the Software (or any upgrades thereto or related written materials) except for emergency back-up purposes or as permitted by the express written consent of Davenport Group; (ii) reverse engineer, decompile, or disassemble the Software; (iii) sell, lease, license, or sublicense the Software; or (iv) create, write, or develop any derivative software or any other software program based on the Software. In the event this Agreement or an applicable Order is terminated for any reason, Davenport Group shall have the right to access Client’s network and/or computers in order to remove any Software provided by Davenport Group under this Agreement.

5.4 **Confidential Information.** The parties agree that “Confidential Information” (as defined below) may be disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”) under this Agreement. Therefore, the

Receiving Party agrees that it shall hold in confidence and, without the prior written approval of the Disclosing Party, shall not disclose to any third party, except to employees and subcontractors having a need to know, any Confidential Information provided to the Receiving Party by the Disclosing Party or any of its subsidiaries or affiliates. The Receiving Party agrees not to use Confidential Information for any purpose other than within the scope of this Agreement. For this Section “Confidential Information” means: (i) any information of the Disclosing Party, such as related technical data and know-how, financial information, customers, pricing, terms of sale, products, processes, plans, personnel, research and development projects or other aspects of the business of the Disclosing Party, a subsidiary or affiliate, until such information shall have ceased to be proprietary as evidenced by general public availability and knowledge; and (ii) information of a third party as to which the Disclosing Party, its subsidiary or affiliate has a non-disclosure obligation known to the Receiving Party. “Confidential Information” shall not include information already known to the Receiving Party prior to entering this Agreement or information that is publicly known. The Receiving Party understands and agrees that any breach of the covenants contained in this Agreement will cause irreparable injury and damages to the Disclosing Party for which there is no adequate remedy at law, and as to which money damages cannot be readily ascertained. Accordingly, the Receiving Party consents in such event to the granting of injunctive relief against any continuing breach, together with retrospective relief in the form of liquidated damages equal to the entire amount of all fees or other revenue collected by the Receiving Party for its efforts as a result of the breach. In addition, the parties agree confidential information does not include any information required to be released under the Oklahoma Open Records Act.

5.5 **Non-exclusivity.** Client agrees and acknowledges that nothing in this Agreement shall be deemed exclusive and nothing shall restrict Davenport Group’s ability to provide similar services to third parties who may be considered competitors of Client so long as Davenport Group does not breach its obligations under Paragraph 5.4 above.

## 6. **Provisions Applicable to the Services.**

6.1 **Access.** Client agrees to provide Davenport Group with physical access to its individual computer systems and networks for Davenport Group to perform its services. Client also agrees that Davenport Group may access its computer systems or networks via telephone, data line, Internet connection, or other means of communication, in order to perform services upon the systems or network.

- 6.2 **Compliance with Regulations.** Davenport Group shall comply with all applicable federal, state or local law, rule or regulation.
- 6.3 **Records.** Davenport Group agrees to keep accurate and complete records of the services it performs for Client. These records shall be the property of Davenport Group. These records will not include backups or copies of data from Client's computer systems, unless necessary to perform services which are the subject of this Agreement. Davenport Group shall not be responsible for restoring data lost by Client from Davenport Group's own records. Unless specifically set forth in an Order, Davenport Group shall not provide backup services to Client. Client is encouraged to utilize either the backup services offered by Davenport Group or the backup services provided by a third party.
- 6.4 **Temporary Files.** Client agrees and understands that Davenport Group deletes temporary internet files stored on Client's computers and computer system. Davenport Group is in no way liable for any lost passwords or other information due to Davenport Group's deletion of such files.
- 6.5 **Issuance of Keys, Passcodes, and Login Credentials.** Customer may, at its discretion, issue access keys, passcodes, or other Access Credentials to Davenport Group for the purpose of performing services on behalf of the Customer. Davenport Group acknowledges that the issuance and management of Access Credentials are the responsibility of the Customer. Davenport Group agrees to treat all Access Credentials as confidential information and shall take all the necessary measures to safeguard their security. Upon termination or completion, Customer is responsible for promptly deactivating access points or credentials as needed.

## 7. **Representations and Warranties; Disclaimer.**

- 7.1 **Client Representations and Warranties.** Client represents and warrants that (i) it has full authority to enter into this Agreement, (ii) any Client provided software, information or other content does not infringe upon any third party copyright, trademark, patent, trade secret, or other third party right, (iii) Client will comply with all applicable laws, terms of use and with the conditions of applicable to its business, and (iv) Client shall maintain its business in a generally accepted and reputable manner.
- 7.2 **Davenport Group Representations and Warranties.** Davenport Group represents and warrants that: (i) it has full authority to enter into this Agreement, (ii) the Services shall conform to the description of work to be performed in the Order and shall be performed in a professional and workmanlike manner; (iii) the Work Product will conform in all material respects to the written specifications in the Order, (iv) the Work Product and

the Davenport Group Materials will not violate or infringe upon the intellectual property rights of any third parties; and (v) Davenport Group will comply with all applicable laws and terms applicable to the Services.

## 8. Independent Contractor.

8.1 Davenport Group hereby represents that it is an independent contractor and that the relationship between Client and Davenport Group created by this Agreement is an independent contractor relationship.

## 9. No Warranties or Guarantees.

9.1 DAVENPORT GROUP MAKES NO OTHER REPRESENTATIONS, WARRANTIES, OR GUARANTEES, WHETHER EXPRESS OR IMPLIED, EXCEPT FOR THOSE SET FORTH IN THIS AGREEMENT IN WRITING, INCLUDING, WITHOUT LIMITATION, ALL REPORTS, SUMMARIES, INFORMATION OR RECOMMENDATIONS PREPARED OR ISSUED BY DAVENPORT GROUP, OR ADDITIONAL SERVICES, IF ANY, OR WITH RESPECT TO ANY OTHER MATTER HEREUNDER. DAVENPORT GROUP HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DAVENPORT GROUP FURTHER DISCLAIMS ANY WARRANTY REGARDING THE COMMERCIAL SUCCESS OR COMMERCIAL PERFORMANCE OF THE DELIVERABLES.

## 10. LIMITATIONS OF LIABILITY AND DAMAGES.

10.1 IN NO EVENT SHALL DAVENPORT GROUP BE LIABLE, WHETHER IN CONTRACT OR IN TORT, FOR ANY LOST PROFITS, LOST SAVINGS, LOST DATA, LOST OR DAMAGED SOFTWARE, OR ANY OTHER SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT OR ORDERS, REGARDLESS OF WHETHER DAVENPORT GROUP HAD NOTICE OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. IN ADDITION, THE TOTAL LIABILITY OF DAVENPORT GROUP FOR ANY CLAIM OR DAMAGE ARISING FROM OR OTHERWISE RELATED TO THIS AGREEMENT, SHALL NOT EXCEED \$10,000 OR THE TOTAL AMOUNT PAID TO DAVENPORT GROUP BY CLIENT UNDER THE APPLICABLE ORDER, WHICHEVER IS LESS.

## 11. Indemnification.

11.1 To the extent provided by law, each party (the “Indemnifying Party”) shall indemnify, defend, and hold the other party (the “Indemnified Party”) harmless from and against any demand, cause of action, debt, or liability, including interest, penalties, court costs, and reasonable attorneys’ fees, based upon any third party claim or suit against the other party arising out of, or related to, the performance of any provision of this Agreement (including without limitation the representations and warranties set forth in this Agreement). In claiming any indemnification hereunder, the Indemnified Party shall promptly provide the Indemnifying Party with written notice of any claim that the Indemnified Party believes falls within the scope of this Paragraph 10. The Indemnifying Party shall provide a defense for the Indemnified Party with legal counsel of its own choice and reasonably satisfactory to the Indemnified Party, and shall pay the full amount of any settlement, judgment, or award. The Indemnified Party may, at its own expense, assist the defense if it so chooses, provided that the Indemnifying Party shall control such defense and all negotiations relative to the settlement of any such claim, and provided further that any settlement intended to bind the Indemnified Party may not be entered into without the Indemnified Party’s prior written consent, which shall not be unreasonably withheld or delayed. The Indemnified Party shall use its best efforts to cooperate with the Indemnifying Party in any such defense. If the Indemnifying Party fails or refuses to provide a defense, then the Indemnified Party shall defend or settle the claim at its election, and the Indemnifying Party shall pay all costs of defense and any settlement, judgment, or award.

## 12. General.

12.1 **Assignment; Subcontractors.** The rights and obligations of the parties under this Agreement may not be assigned or transferred without the written consent of the other party; provided that this Agreement and the rights and obligations hereunder may be assigned, without consent, to a third party that acquires all or substantially all the assets, business or ownership interests of a party hereto. Davenport Group may use subcontractors in connection with providing the Services pursuant to this Agreement.

12.2 **Non-Solicitation.** Each party agrees not to hire, contract, or take away or cause to be hired, contracted, or taken away, any employee or independent contractor from the other party, for a period of two years following termination of this MSA.

12.3 **Taxes.** Client shall be responsible for all applicable sales, use, or other taxes related to or arising from the Services, excluding Davenport Group’s income taxes. Client shall pay such taxes, or reimburse Davenport Group for such taxes, within thirty (30) days of Davenport Group invoice for these taxes.

- 12.4 **Governing Law and Jurisdiction.** This Agreement shall be governed in all respects by the laws of the State of Oklahoma, without regard to its conflict-of-laws provisions. The parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of Oklahoma and any United States District Court situated in the State of Oklahoma for the purposes of construing and enforcing this Agreement.
- 12.5 **Amendment.** This Agreement may be amended only by an instrument in writing executed by an officer of both parties.
- 12.6 **Attorneys' Fees.** Should a dispute between the parties relating to this Agreement result in litigation or arbitration, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.
- 12.7 **Paragraph Headings.** Paragraph headings are for reference purposes only and shall not affect the interpretation or meaning of this Agreement.
- 12.8 **Notices.** Any notice required hereunder shall be made in writing by either hand delivery, nationally recognized courier service, or certified mail with return receipt. Such notice shall be deemed given: (i) at the actual time of receipt if notice is given by hand delivery; (ii) on the date of delivery as set forth on a receipt provided by a nationally recognized courier service if notice is given by courier; or (iii) three business days after mailing if notice is given by certified mail, return receipt. All notices given under this Agreement shall be sent to the addresses set forth on the first page of this Agreement. Either party may change the address to which notices are to be sent by giving notice of the requested change of address to the other party in the manner referenced above.
- 12.9 **No Waiver of Performance.** Failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement will not be construed as a waiver of any right accruing under this Agreement, nor affect any subsequent breach, nor affect the effectiveness of this Agreement or any part hereof, nor prejudice either party with respect to any subsequent action.
- 12.10 **Entire Agreement.** This Agreement and the above-referenced non-expired Orders and applicable Service Addendums constitute in aggregate the entire agreement between Client and Davenport Group with respect to the subject matter hereof and no representation or statement not contained in this Agreement shall be binding upon Davenport Group or Client as a warranty or otherwise. If any provision (or part thereof) of this Agreement is determined by a court of competent jurisdiction, government action or binding arbitration,

to be invalid, illegal, or otherwise unenforceable, such provision shall be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of this Agreement shall remain in full force and effect and bind the parties according to its terms. This Agreement may be executed in multiple counterparts, all of which together will constitute one original document.

12.11 **Force Majeure.** Davenport Group shall not be liable for failure to perform any of its obligations under this Agreement during any period in which such performance is delayed by accidents beyond Davenport Group's reasonable control, such as, but not limited to fire, flood, or other natural disasters, or, embargo, court order, riot, or other intervention of any government authority, provided that Davenport Group immediately notifies Client of such delay. If Davenport Group's performance is delayed for these reasons for a cumulative period of sixty (60) days or more from the date of such notice, Client may terminate this Agreement by giving Davenport Group written notice.

12.12 **Severability.** The provisions of this Agreement are severable and if any provision is held to be unenforceable or invalid. It shall not affect the validity or enforceability of any other provision.

12.13 **Construction.** The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date written above.

**City of Broken Arrow, OK**

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Signature

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Name

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Title

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Date

**Davenport Group, Inc.**

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Signature

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Name

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Title

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Date