



## MASTER SERVICES AGREEMENT

This MASTER SERVICES AGREEMENT number ATL06152016b (this "MSA") is between CARVIR, LLC, a Georgia corporation with offices at 410 Peachtree Parkway, Suite 4245, Atlanta, GA 30041 ("Provider") and the Company that is referenced in Provider signed Statement of Work ("Client"). This MSA shall be effective as of the date approved in writing by the Client on a Statement of Work (the "Effective Date"). The parties agree as follows:

- 1) **SCOPE OF SERVICES.** Provider agrees to assist Client with the services ("Services") and deliver the products ("Products") as set forth in all Statements of Work (including any schedules, quotations and exhibits expressly included therein) issued pursuant to this MSA as a Statement of Work or Technology Statement of Work (each, a "SOW") that may be executed from time-to-time by both parties pursuant to this MSA (collectively, the "Services"). To be effective, each SOW issued pursuant to this MSA shall reference this MSA and, when fully executed, shall be governed by the terms of this MSA. In the event of a direct conflict between the language of this MSA and a term in SOW, the language of SOW shall control, but only with respect to that particular SOW. Further, in the event of a direct conflict between the language of SOW and each applicable Quotation attached to, and incorporated by reference into, that SOW, the language of the Quotation shall control, but only with respect to that particular Quotation. Provider shall not be responsible for failure or delay in its performance of the Services solely to the extent such failure or delay is attributable to Client's failure to provide such access to personnel, information, or materials.
- 2) **PAYMENT.** Unless otherwise stated in a SOW, payment is due within ten (10) days after the date Client receives an invoice from Provider (the "Due Date"). For prepaid fees or fees pursuant to a service plan, payment must be made in advance of Services being performed. Client agrees that invoices may be submitted via email and, if so, shall be received as of the day emailed by Provider. Payments not received by the Due Date are late and shall be subject to interest on the unpaid invoice amount(s) until and including the date payment is received, at the lower of either 1.5% per month or the maximum rate of interest allowed by law. Client shall be liable for and promptly pay all reasonable attorneys' fees and all out-of-pocket costs incurred in collection of past due balances. If Client is 15 or more days late with any payment made pursuant to any SOW, Provider reserves the right to suspend Services for that or any other SOW until all payments are current. In addition, if Client is 60 or more days late with any payment made on any SOW, Provider reserves the right to demand that all current or future amounts payable pursuant to that or any SOW are immediately due. If future amounts payable are unknown, Provider shall, for the purposes of this Section 2, estimate those amounts, using its sole and absolute discretion, which shall be adjusted if and when they become known. No suspension of Services or acceleration of payments shall impact Client's responsibility to continue to pay for any and all other current or future obligations specific in SOW. It is understood that any Federal, State or Local taxes applicable to this MSA and the provision of goods or services hereunder shall be added to each invoice for services or materials rendered under this MSA (excluding all taxes based upon Provider's income and/or assets). Client shall pay all such applicable taxes in accordance with the payment terms in this Section 2.
- 3) **AUTHORIZED CONTACT PERSON.** Each party shall designate in each SOW one or two authorized contact person(s) (each, an "Authorized Contact") with whom the other party will conduct Service-related communications, SOW changes, or SOW Change Orders (as defined in the applicable SOW) communications for that SOW. If either party fails to designate an Authorized Contact in a SOW, the Authorized Contact shall be the individual who signed the SOW on behalf of such party. Each Authorized Contact shall be a point of contact for the other party, and shall be authorized to provide, modify and approve changes to SOW and Change Orders on behalf of the party he/she represents. Each party understands and agrees that the other party shall be permitted to act upon the direction and apparent authority of each Authorized Contact, unless and until such party receives written notice from the other party (as described below) that an Authorized Contact is no longer authorized to act on the other party's behalf. If during the Term (as defined in Section 8) of this MSA, either party wishes to add or remove an Authorized Contact, or modify an Authorized Contact's information or authority, such party must notify the other party in writing of the change(s) including (in the event of the addition of an Authorized Contact) the Authorized Contact's name, address, email address and telephone number. Such change will become effective upon the other party's receipt of such written notice.
- 4) **PROVIDER ACCESS.** Client agrees that Provider may be required to utilize Client's information technology and related information and assets, whether owned, leased, rented or otherwise contracted for, (collectively "Client Assets"), solely to the extent necessary for Provider to perform the Services and Provider's information technology and other assets which may or may not be located on Premises (collectively, any location where Client or non-client persons conduct tasks associated with any processing tasks or where Client utilizes information technology or other equipment to support the execution of those tasks) ("Provider Assets"). Provider will require reasonably necessary access to Client Assets, Client personnel, and Premises in providing the Services and fulfilling its obligations.
  - a) To the extent that Services are performed on Premises, Client will allow Provider timely ingress and egress, either on Premises or via remote communications, at Provider's choice, over the Premises solely as necessary for the purposes of providing the Services and/or otherwise fulfilling its obligations pursuant to this MSA and/or any SOW within the Premises; provided, that Provider shall not be responsible for delay or failure in its performance of the Services solely to the extent such delay or failure is attributable to Provider's compliance with such policies. Client agrees to provide Provider with reasonably adequate work space at Premises. Additionally, subject to all of Client's reasonable policies and procedures, including without limitation, regarding access, security, and confidentiality, Client shall provide Provider with access via remote access to the Client Assets (and Provider Assets, to the extent within Client's control) during and after Client's normal business hours, to the extent necessary for Provider to perform the Services.
  - b) Prior to the commencement of any Services, it shall be Client's responsibility to secure, at Client's own cost, any access rights as set forth above.
  - c) Client shall not unreasonably withhold access from Provider to any rights of entry, licenses, passwords / keys (virtual or otherwise), permits or other permission necessary for Provider to provide Services at Premises or via remote communications as set forth above, or to use Client Assets (or Provider Assets, to the extent within Client's control) at Premises or via remote communications, all to the extent the same are requested by Provider.
  - d) Quality, condition and vendor warranties of Client Assets are the responsibility of Client. Provider shall not be liable for delay in

performance or nonperformance of any term or condition of this MSA or SOW to the extent directly or indirectly resulting from Client's or a third party's failure to allow or permit Provider access remotely or on Premises to Client personnel, Client Assets, Provider Assets or Premises.

#### 5) EXCLUDED SERVICES.

- a) Mounting or removal of any Provider Assets or Client Assets, including cabling as needed, which may or may not be attached to building structure or office furniture is Client responsibility.
- b) Bandwidth evaluation and provisioning, if Client requests the same from Provider in writing, is an Additional Service that will require separate written agreement between the parties.

#### 6) WARRANTIES; LIMITATIONS OF LIABILITY.

- a) Any third party products, services or provided to Client pursuant to this MSA or any SOW, including but not limited to third party hardware, software, peripherals, accessories and services (collectively, "Third Party Products") shall be provided to Client without any warranty whatsoever as between Provider and Client. Provider shall pass-through any and all available third party warranties for the Third Party Products to Client to the extent permitted by Third Party Products owner, but will have no liability whatsoever for such third party products. Provider shall not be held liable as an insurer or guarantor of the performance or quality of Third Party Products.
- b) Each Party represents that: (i) it shall provide all services and materials under this MSA and each SOW in a professional, workmanlike manner, consistent with industry standards and in compliance with all applicable laws.
- c) EXCEPT AS EXPRESSLY SET FORTH IN THIS MSA AND/OR ANY APPLICABLE SOW, THERE ARE NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESSED OR IMPLIED, WITH RESPECT TO SERVICES OR PRODUCTS TO BE PROVIDED BY PROVIDER OR ANY SERVICES PROVIDED BY PROVIDER PURSUANT TO THIS MSA OR ANY SOW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED.
- e) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR FOR LOST REVENUE, LOSS OF PROFITS, SAVINGS, OR OTHER ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH THIS MSA OR ANY SOW EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- f) EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY FOR DAMAGES FROM ANY AND ALL CAUSES WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR NEGLIGENCE, SHALL BE LIMITED TO THE LAST TWELVE (12) MONTHS' FEES PAID BY CLIENT TO PROVIDER UNDER THIS MSA OR ANY SOW. IT IS UNDERSTOOD AND AGREED THAT THE COSTS OF THIRD PARTY PRODUCTS (IF ANY) PROVIDED TO CLIENT UNDER THIS MSA OR SOW SHALL NOT BE INCLUDED IN THE CALCULATION OF THE LIMITATION OF DAMAGES DESCRIBED IN THE PRECEDING SENTENCE.

#### 7) TERM; TERMINATION.

- a) *Term.* The term of this MSA shall commence on the Effective Date, and unless earlier terminated as set forth herein, shall continue for a period of five (5) years, (the "Term"). Termination of any individual SOW shall not automatically terminate this MSA or any other SOW. This Subscription Agreement will automatically renew for successive one-year terms unless cancelled in writing by Subscriber at least sixty (60) but not more than one hundred twenty (120) days prior to the end of the Term or any renewal Term.
- c) Termination by *Mutual Consent.* The parties may mutually consent, in writing, to terminate this MSA or any SOW at any time.
- d) *Breach.* In the event that one party (a "Breaching Party") commits a material breach of this MSA or any SOW, the non-Breaching Party shall have the right, but not the obligation, to immediately terminate this MSA and/or in the case of a SOW Breach only the applicable SOW; provided, that (i) the non-Breaching Party has notified the Breaching Party of the

specific details of the breach in writing, and (ii) if the breach is capable of being cured, the Breaching Party has not cured the default within thirty (30) days following receipt of written notice from the non-Breaching Party.

- e) If any SOW, Quotation or Technology Quotation is terminated for any reason other than mutual consent before the end of any Term, the Early Termination Fee ("ETF") will be due to Provider from Client. The ETF is a one-time payment equal to the sum of the remaining monthly recurring charges ("MRC") for the terminated SOW, Quotation or Technology Quotation for the remaining Term, any unpaid balance of all non-recurring charges ("NRC"), unpaid Additional Services fees plus the average of the previous Additional Service fees during the Term multiplied by the number of remaining months in the Term of the terminated SOW, Quotation or Technology Quotation.
- f) *Provider Asset Return.* Upon termination of this MSA or any relevant SOW for any reason, Client shall return to Provider (or de-install and destroy, at Provider's election) any and all Provider Assets then in Client's possession within fifteen (15) days after the effective date of such termination.
- g) *Transition.* In the event MSA is terminated for any reason whatsoever, all Client data held by Provider shall be returned to the Client (or de-installed and destroyed, at Client's election) in a commercially reasonable manner as promptly as practicable; provided, that Provider may retain Client data to the extent such Client data is incorporated into Provider's work papers, for the sole purpose of enforcing its rights under this MSA or any SOW, subject to Provider's obligations under this MSA with respect to applicable laws regarding confidentiality and information security. Electronic data shall be returned in any mutually agreed to industry-standard format. In the event that Client requests Provider to return electronic or non-electronic data or requests Provider's assistance to transition to a new service provider, provided that all previously amounts due and owing to Provider under this MSA have been paid in full to Provider, Provider shall do so at the project rate stated in Provider's current Services Plan Rate with upfront amounts to be paid to Provider as agreed upon between the parties in writing. All fees for such services shall be paid for in accordance with the payment terms in paragraph 2. Provider shall have no obligation to store or maintain any Client data in Provider's possession or control beyond fifteen (15) calendar days following the termination of this MSA for any reason. Client shall indemnify and hold Provider harmless from and against any and all claims, costs, fees, or expenses incurred by any party that arise from, or are related to, Provider's deletion of Client data beyond the time frames described in this Section.

#### 9) CONFIDENTIALITY.

- a) *Confidential Information Defined.* For the purposes of this MSA, "Confidential Information" shall mean any and all non-public information provided or made available to receiving party ("Receiver") by the disclosing party ("Discloser"), including but not limited to Discloser's customer data, customer lists, internal documents, related information, proposal contents, contract contents, the MSA, SOWs, pricing and trade secrets and all modules derived or created from such materials, any intellectual property, and any other information that by its nature or the nature of its disclosure reasonably should be considered confidential.
- b) *Confidential Information.* "Confidential Information" shall not include information that: (i) has become part of the public domain through no act or omission of Receiver; (ii) Receiver can establish through reliable documentation was developed independently by Receiver, without use of or reference to Discloser's Confidential Information; or (iii) is or was lawfully and independently provided to Receiver prior to disclosure by Discloser.
- c) *Use.* Receiver shall keep Discloser's Confidential Information confidential, and shall not use or disclose such information to any third party or employee for any purpose except (i) as expressly

authorized by Discloser in writing; or (ii) solely as needed to fulfill Receiver's obligations pursuant to this MSA and all SOWs. If Receiver is required or permitted under the terms of this MSA to disclose the Confidential Information to any third party as described in the preceding sentence, then Receiver shall ensure that such third party is required to keep such Confidential Information confidential under terms that are at least as restrictive as those stated in this MSA, subject to Section 9(e) below.

- d) *Due Care*. Receiver shall exercise the same degree of care with respect to the Confidential Information it receives from Discloser as Receiver normally takes to safeguard and preserve its own confidential and proprietary information, which in all cases shall be at least a commercially reasonable level of care.
- e) *Compelled Disclosure*. If Receiver is legally compelled by a court of competent jurisdiction to disclose any of the Confidential Information of Discloser, Receiver shall, to the extent legally permissible, promptly notify Discloser of such requirement so that Discloser may seek a protective order or other appropriate remedy and/or waive Receiver's compliance with the provisions of this MSA. Receiver will, at Discloser's expense, reasonably assist Discloser in obtaining any such protective order. Failing the entry of a protective order or the receipt of a waiver hereunder, Receiver may disclose, without liability hereunder, the Confidential Information that is the subject of such request.
- f) *Injunctive Relief*. The parties agree that an impending or existing violation of any provision of this Section 9 may cause the Discloser irreparable injury for which it would have no adequate remedy at law, and agree that the Discloser shall be entitled to immediate injunctive relief prohibiting such violation (without the requirement of posting bond or other security), in addition to any other rights and remedies available to it.
- g) *Termination*. This Section 9 shall survive the expiration or earlier termination of this MSA.

#### 10) OTHER PROVISIONS

- a) *Service Request*. To record a Service request Client is required to submit a Service Request ("Service Request") using CARVIR's Help Desk and Ticketing system.

#### 11) GENERAL PROVISIONS

- a) *Assignment*. This MSA or SOW may not be assigned or transferred by either party without the prior written consent of the other party; provided, that Provider may assign this MSA without consent in connection with a merger, divestiture, change of control, or sale of all or substantially all of its assets. This MSA shall be binding upon and inure to the benefit of the parties hereto, their legal representatives, and permitted successors and assigns.
- b) *Amendment*. No amendment or modification of this MSA or SOW shall be valid or binding upon the parties unless such amendment or modification specifically refers to this MSA or SOW, is in writing, and is signed by one of the Authorized Contacts of each party.
- c) *Severability*. If any provision of this MSA or SOW is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, illegibility or unenforceability so that the remainder of that provision and all remaining provisions of this MSA or SOW shall be valid and enforceable to the fullest extent permitted by applicable law.
- d) *Other Terms*. Neither party shall be bound by any terms or conditions printed on any purchase order, invoice, memorandum, or other written communication between the parties unless expressly incorporated herein or in SOW pursuant to the terms of Section 10(b) or included in the original terms and conditions of that MSA or SOW.
- e) *No Waiver*. The failure of either party to enforce or insist upon compliance with any of the terms and conditions of this MSA or SOW, the temporary or recurring waiver of any term or condition of this MSA or SOW, or the granting of an extension of the time for performance, shall not constitute an agreement to waive such terms with respect to any other occurrences.
- f) *Merger*. This MSA, together with all SOWs, set forth the entire understanding of the parties and supersede any and all prior agreements, arrangements or understandings related to the Services, and no

representation, promise, inducement or statement of intention has been made by either party which is not embodied herein. Any document that is not expressly and specifically incorporated into this MSA or SOW shall not act to modify this MSA or SOW or provide binding contractual language between the parties. Neither party shall be bound by any agent's or employee's representations, promises nor inducements not explicitly set forth herein.

- g) *Force Majeure*. Neither party shall be liable to the other party for delays or failures to perform its obligations under this MSA or SOW because of circumstances beyond its reasonable control and without its fault or negligence. Such circumstances include, but shall not be limited to, any acts or omissions of any governmental authority, natural disaster, acts of a public enemy, acts of terrorism, riot, sabotage, power failure, communications delays/outages, delays in transportation or deliveries of supplies or materials, or acts of God.
- h) *Non-Solicitation*. During the term of this MSA and for a period of one (1) year following the termination for any reason of this MSA, Client will not, individually or in conjunction with others, directly or indirectly solicit, induce or influence any of Provider's employees, vendors, partners or subcontractors to discontinue or reduce the scope of their business relationship with Provider, Client shall also not recruit, solicit or otherwise influence any employees, vendors, partners or subcontractors (of Provider to discontinue such employment, agency or other relationship with Provider. If Client violates the terms of the restrictive covenants in this Section 10(h) as it relates to any of Provider's employees, staff members or subcontractors (hereinafter for the Solicited Party purposes of this Section 10(h) only referred to jointly as "Solicited Party"), the parties acknowledge and agree that the damages to Provider would be difficult or impracticable to determine, and agree that if such event occurs, that Client shall pay Provider as liquidated damages and not as a penalty an amount equal to fifty percent (50%) percent of that Solicited Party's last twelve months of total compensation and other payments from Provider (including any signing bonus with Client). If Solicited Party's relationship with Provider does not span at least twelve complete months, an estimate of twelve months of total compensation and other payments shall be used in the previous calculation. First, a calculation of the monthly average of the complete months of total compensation and other payments during the last twelve months shall be determined. Then that average shall be multiplied by the number of missing or incomplete months during the last twelve months the result of which shall be added to the actual paid total compensation and other payments for complete months during the last twelve months to determine the estimated total compensation and other payments from Provider to solicited party.
- i) *Insurance*. Provider and Client shall each maintain, at their own expense, all insurance to include reasonably required in connection with this MSA or any SOW, including but not limited to, worker's compensation. The required insurance coverage shall be issued by an insurance provider duly authorized and licensed to do business in the State where Provider or Client is incorporated with the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide: Financial Stability B+ to A+.
- j) *Governing Law*. This MSA shall be governed by the laws of the State of Georgia without regard to its conflict of laws provisions. The parties agree that the United States District Court and/or the state courts located in Forsyth county, Georgia, shall have sole and exclusive jurisdiction over all matters arising out of this MSA and each SOW, and the parties' contractual relationship. The parties expressly waive any claims or objections that any legal proceedings, legal suit, action or proceeding in equity brought in these courts are inconvenient or unfair. In the event either party institutes any legal proceedings in any court other than those specified above, the instituting party hereby expressly consents to transfer of the matter to the United States District Court or State Court located in Forsyth County, Georgia, and shall reimburse the other party's costs in connection therewith, including without limitation, such party's

reasonable attorneys' fees. THE PARTIES AGREE THAT THEY WAIVE ANY RIGHT TO A TRIAL BY JURY FOR ANY AND ALL CLAIMS AND CAUSES OF ACTION ARISING FROM OR RELATED TO THIS MSA OR SOW.

- k) *No Third Party Beneficiaries.* The Parties have entered into this MSA and all SOWs solely for their own benefit. They intend no third party to be able to rely upon or enforce this MSA or any part of this MSA or SOW or any part of SOW.
- l) *Business Day.* If any time period set forth in this MSA or SOW expires on a day other than a business day in Atlanta, Georgia, such period shall be extended to and through the next succeeding business day.
- m) *Usage in Trade.* It is understood and agreed that no usage of trade or other regular practice or method of dealing between the Parties to this MSA or SOW shall be used to modify, interpret, supplement, or alter in any manner the terms of this MSA or SOW.
- n) *Notices.* Where notice is required to be provided to a party under this MSA or any SOW, such notice shall be deemed delivered upon receipt by the receiving party, when deposited in the United States Mail, first class mail, certified with return receipt requested, postage prepaid, or one (1) day following delivery when sent by FedEx or UPS to the addresses set forth in the opening paragraph of this MSA, or to such other address(es) as the parties may designate from time to time.
- o) *Independent Contractor.* Each party is an independent contractor of the other, and neither is an employee, partner or joint venturer of the other.
- p) *Subcontractors.* Provider may subcontract part or all of the Services to one or more third parties; provided, that (i) Provider shall remain fully responsible and liable for all services performed by such subcontractors.
- q) *Counterparts.* The parties may execute and deliver this MSA and any SOW in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one agreement. Each party may execute and deliver this MSA and each SOW electronically (e.g., by digital signature and/or electronic reproduction of a handwritten signature), and the receiving party shall be entitled to rely upon the apparent integrity and authenticity of such signature for all purposes.
- r) *Client Control.* Client shall provide reasonably requested working space, miscellaneous materials (such as cabling, patch cables, cross connect cables, etc.) and assistance as may be reasonably necessary for the performance of Services including, without limitation, commitment of management and other personnel efforts as are reasonably necessary, all at Provider's

expense; (b) as between Provider and Client, Client is responsible for the accuracy of information provided to Provider upon which Provider relies to estimate costs of, financial benefits of, design of or implementation of Services.

- s) *Expenses.* Client shall pay to Provider all reasonable, actual expenses incurred by Provider in providing Services and Products pursuant to this MSA. Travel time shall be billed in accordance as specified in the SOW for each project. Non time expenses may include, without limitation, costs of travel, meals, lodging, magnetic media, telephone, distance meeting, shipping and handling and direct material expenses incurred by Provider, each to the extent preapproved by Client in writing.
- t) *Affiliates.* All Affiliates of Client shall be included in definition of Client for the purposes of this MSA. For purposes of this MSA, "Affiliate" means any entity that controls, is controlled by, or under common control with Client. For the purposes of this definition, the term "control" means the direct or indirect power to direct the affairs of the other person through a majority of the shares, voting rights, contract, participation, or economic interest. Additional entities included pursuant to this Paragraph 11(t) are not third party beneficiaries to this MSA or SOW.
- v) *Survival.* Sections 6, 7, 8(f), 9, and 10 shall survive the expiration or earlier termination of this MSA.
- w) *Reference of MSA Terms in SOW.* Each party stipulates and agrees that the terms and conditions of this MSA are included by reference in SOWs. SOWs may state that the SOW is subject to the terms and conditions of this MSA.
- x) *Attorneys' Fees.* In any action brought by one party against the other party hereto, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

11) **SIGNATURES.** By referencing this MSA in a Statement of Work signed by both parties, the parties hereto agree to all terms, conditions and covenants contained herein.

**IN WITNESS WHEREOF, the parties hereto have caused this MSA to be agreed upon by their duly authorized representatives only as a part of a Statement of Work signed and agreed to by both parties.**

**Version Control:**

Agreement Number	Last Modified Date	Version
ATL06152016b	Created May 1, 2016	V 2016.a