

## Software Development AGREEMENT

This Software Development Agreement ("Agreement") dated as of \_\_\_\_\_, 20\_\_ ("Effective Date") is entered into by and between **Sourcereer** ("Sourcereer"), located at **656 Industrial Park Road, Ebensburg, PA 15931** and **Customer Name** located at **Customer Provider Address** ("Customer").

Sourcereer has experience and expertise providing the goods and services as detailed within this Agreement and therefore the Customer may desire to obtain the full benefit of the goods and services of Sourcereer and Sourcereer as a result desires, as an independent contractor, to provide Customer with the full benefit of Sourcereer's goods and services as agreed upon by the Customer.

In consideration of the mutual promises and agreements contained within this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Customer and Sourcereer intending to be legally bound agree to the following:

### MASTER AGREEMENT

This Agreement states the terms and conditions under which Sourcereer will deliver and Customer will receive the goods and services ("Services") and deliverables ("Deliverables"). Services and Deliverables will be further detailed pursuant to an applicable statement of work ("Statement of Work" or "SOW") and/or Sourcereer's terms and conditions (defined below in **Exhibit C**). This Agreement shall apply to all Statements of Work and Change Orders entered into during the term of this Agreement, with respect to the Services (defined below) that are the subject of this Agreement, unless the parties expressly agree otherwise by a written modification to this Agreement, signed by an authorized representative of both parties. In the event there is a conflict between the terms of this Agreement and a Statement of Work or Change Order and/or any other exhibit or schedule to this Agreement, the terms of this Agreement shall control and in the event of a conflict between a Statement of Work and any other exhibit or schedule, the Statement of Work shall govern.

For purposes of this Agreement, "Affiliate" shall mean any corporation, partnership, or any form of legal entity, which Controls, is Controlled by, or is under common Control with, a party within this Agreement. "Control" and its derivative forms means indirect or direct possession whole or in part in any means of business.

### SERVICES

Except as otherwise provided within this Agreement, Sourcereer will perform any Services hereunder in a diligent and professional manner upon the issuance of a proposal or written SOW. SOWs will be jointly prepared and executed by Sourcereer and Customer for each engagement.

During the term of this Agreement, Sourcereer shall provide Customer with software development, IT management, maintenance, security and support Services, if applicable, as set forth within the SOW. Sourcereer does not keep an inventory of hardware due to the rapid pace that technology changes, therefore, all items within a SOW are custom ordered and may not be returned to Sourcereer. To the extent any items ordered are covered under a manufacturer's or other warranty, you must contact the manufacturer or other warrantor to return an item or have it repaired or replaced. All products and goods supplied by Sourcereer are provided as-is and Sourcereer makes no warranties whatsoever, including express warranties or implied warranties of merchantability, about any products, goods, or services supplied hereunder.

If Customer desires to change, modify or supplement the Services to be performed under a particular SOW or if Sourcereer believes a SOW needs to be changed, modified or supplemented, the requesting party shall request any modifications or supplemental actions pursuant to a Change Order (the "Change Order"). A Change Order shall not be effective unless Sourcereer and Customer mutually agree in writing to the changes or modifications to the Services as set forth in the applicable Change Order or the description of the supplemental services described therein. Each Change Order shall include any additional costs and schedule changes or additions. In the event the parties cannot agree to the terms of the Change Order,

then either party may terminate the underlying SOW, subject to the terms of this Agreement. Change Orders may only be executed by an authorized signatory from each party.

Sourcereer shall comply with and be subject to the additional requirements and any accompanying damages for breach of those requirements stated in the Sourcereer Service Level Agreement ("SLA's"), attached hereto and incorporated herein as **Exhibit D**. For the avoidance of doubt, Exhibit D specifies Sourcereer may, in its sole discretion, update the contents of Exhibit D by providing written notice of such changes to Sourcereer at least 30 days prior to the changes taking effect.

#### LICENSE ACCESS AND USE

Sourcereer hereby grants to Customer and its Affiliates, a non-exclusive, transferable and sublicensable right to:

1. Access, modify and use the Services, including in operation with other software, hardware, systems, networks, and services, for Customer's and its Affiliates' respective business purposes, including for processing customer data.
2. Generate, print, copy, upload, download, store, and otherwise process data, audio, visual, digital, and other output, displays, and content as may result from any access to or use of the Services.
3. Access and use the Services for all such non-production uses and applications as may be necessary or useful for the effective use of the Services hereunder, including for purposes of analysis, development, configuration, integration, testing, training, maintenance, support, and repair.

#### SERVICE IMPLEMENTATION

Sourcereer shall appoint a Sourcereer employee to serve as Customer's primary contact with respect to the Services, who will have the authority to act on behalf of Sourcereer in matters pertaining to the receipt and processing of support requests and the support services (the "Client Advocate"). Sourcereer agrees to provide a Client Advocate throughout the term and such additional period agreed upon thereafter in a SOW. During the period Sourcereer is required to perform the Services, except in the event changes in such personnel due to Customer's request, or the death, disability, resignation, or termination of such personnel or other circumstances outside Sourcereer's reasonable control, effect Service Availability. In this event, Sourcereer shall provide written notification to the customer of any necessary change to the Customer's assigned Client Advocate.

#### CLIENT MANAGEMENT

Sourcereer shall assign representatives to the following positions after obtaining Customer's consent:

4. A primary contact to act as its authorized representative with respect to all matters pertaining to this Agreement (the "Sourcereer Contract Manager"). This may be the above mentioned "Client Advocate" in some cases.
5. A sufficient number of employees to perform the Services set out in each SOW.

Sourcereer may make changes to Sourcereer's Representatives or at the request of Customer, in which case Sourcereer shall promptly appoint a replacement and notify the customer in a timely manner prior to the date of the effective change.

Prior to any Sourcereer Representative performing any Services hereunder, Sourcereer shall comply with all applicable laws and regulations in providing the Services, comply with all Customer rules, regulations, policies, and procedures of which it has been made aware, in its provision of the Services, and maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Sourcereer in providing the Services in such form as Customer shall approve.

### TERMS OF PAYMENT

Unless otherwise expressly stated in writing and mutually agreed upon, Sourcereee will bill Customer monthly for all Services and expenses provided during that services period as time and materials. The payment terms of this Agreement shall be NET 30 days from Customer's date of invoice. Any invoice or notice related to billing under this Agreement shall be in writing and transmitted electronically, unless mutually agreed upon, and addressed to the Customer as follows:

Primary Customer Accounts Payable Contact	
Name	
Billing Address	
Email	
Telephone	

If the Primary Customer Accounts Payable contact changes, the Customer must notify Sourcereee within a timely manner of such change and provide the above updated information for any replacement contact.

If the Customer is tax exempt, it is required that the PA tax exemption form REV-1220, or relevant state form, completed and signed by an authorized representative of the Customer be attached within **Exhibit F** of this Agreement.

Late fees may be applied to your account for past due balances for invoices that are 30 days or more past due. The greater of a flat late fee of Ten Dollars and Zero Cents (\$10.00) per month or interest of one and a half percent (1.5%) per month shall be charged during each month on outstanding balances that are owed on the account, for all past due amounts. If you are having financial difficulties, please contact Sourcereee to negotiate a mutually agreed upon payment plan to bring your account balance current and to continue our services and support. If the parties do not reach a mutually agreed upon payment plan, Sourcereee reserves the right to suspend services within any and all SOWs with the Customer with past due invoices. Customer will be notified via electronic mail that their account will be suspended due to lack of payment, with a five-business day (5-business day) grace period during which any delinquencies can be cured and/or payment arrangements made. To the extent the Customer breaches the terms payment within this Agreement with Sourcereee in any way, including but not limited to a failure by the Customer to timely remit payment for invoiced work or services, and Sourcereee files any claim or legal action against Customer in accordance with such breach(es), Sourcereee shall be expressly entitled to recover any and all its costs and expenses incurred in pursuit or filing of legal action against the Customer, including but not limited to recovering all reasonable attorneys' fees from Customer.

### CONFIDENTIAL INFORMATION

The obligations of the parties regarding confidentiality and the receipt and disclosure of Confidential Information shall be governed by the mutual non-disclosure agreement (hereinafter "NDA") previously executed by the parties and attached hereto and incorporated herein as **Exhibit A**. Should there be conflict between the terms and conditions of this Agreement and the NDA, the NDA shall govern.

### AUDIT

Sourcereee shall maintain, in accurate and complete order, all books and records (whether in printed, electronic or other format) associated with work performed and charges invoiced to and paid by Customer pursuant to this Agreement. Such books and records, and all other books and records of Sourcereee pertaining to the Agreement, shall be open to inspection and audit by representatives of

Customer during reasonable business hours during the life of the Agreement, and for a period of two (2) years thereafter.

### REPRESENTATIONS AND WARRANTIES

Sourcereer hereby represents and warrants that the Services and Deliverables:

1. Will be delivered and perform in accordance with the terms of this Agreement, any service level agreement, and any applicable statement of work, published specifications, or any proposal provided by Sourcereer, as such Statements of Work, published specifications, or proposal may be modified from time to time as mutually agreed to by the parties in writing.
2. Compatible will Customer's existing software and computing environments required to access the Services and Deliverables. If at any time the Services or Deliverables become incompatible, Sourcereer shall provide written notice within a reasonable time period to the Customer of this fact and Customer shall have the option, in its sole discretion, to terminate this Agreement and any applicable SOWs executed under this Agreement with 90 days written notice.
3. Do not and will not contain and will not transmit any malicious or harmful code.
4. Will not infringe upon the Intellectual Property Rights of any third party.
5. Strictly adhere to Customer's information security policies and disclosures, as attached hereto as Exhibit B.
6. Will not violate any existing agreements or other obligations to which Sourcereer is bound the terms of this Agreement.
7. Perform technical practices, procedures, skill, care, and judgment will employed by experienced, qualified professionals in the relative disciplines involved in the performance of the Services and Deliverables.
8. Perform all Services in a professional and workmanlike manner in accordance with specifications provided by Customer and in accordance with best industry standards and practices for similar services, all applicable laws and this Agreement.
9. Provided Deliverables or Services under this Agreement shall be warranted for a period as stated within the SOW.

At Customer's request, Sourcereer will correct any defects or deficiencies in its Deliverables or Services as soon as possible in accordance to a mutually agreed upon change order. If the Customer reasonably believes that the provision of Deliverables or Services has been so deficient that timely and proper correction is not feasible, Customer may (in addition to any other legal or equitable remedies available) terminate the applicable Services and Deliverables or SOWs in whole or in part with 30 day written notice and/or remedy the deficiency itself (or utilize a third party to do so) at no cost to Sourcereer.

### SECURITY STANDARDS

Sourcereer represents and warrants to Customer that during the entire term of this Agreement, it shall conduct its operations, and perform its obligations under the Agreement, in compliance with all applicable federal, state, foreign, provincial and local laws and ordinances and all lawful orders, rules and regulations thereunder. Sourcereer represents and warrants to Customer that it shall conduct its operations in accordance with, and all Services under this Agreement comply with appropriate industry security standards including, but not limited to The National Institute of Standards and Technologies ("NIST").

### DATA USAGE, PRIVACY AND PROTECTION

Sourcereer is permitted to use Customer's data only in furtherance of this Agreement. Throughout the term and at all times in connection with its actual or required performance of the Services hereunder, Sourcereer shall make the Services available in accordance with the data security requirements set out in a SOW.

Sourcereer shall be solely responsible for the information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems), and networks used by or for Sourcereer to access the customer systems or otherwise in connection with the Services ("Provider Systems") and shall prevent unauthorized access to the customer systems through the Provider Systems. Sourcereer will follow industry best practices, including but not limited to, National Institute of Standards Technology ("NIST"), PCI DDS.

#### **DATA BREACH OBLIGATIONS**

Sourcereer maintains a data breach plan in accordance with this Agreement and shall implement the procedures required under such data breach plan on the occurrence of a data breach. Any failure of the Services to meet the requirements of this Agreement with respect to the security of any customer data or other Confidential Information of Customer, including any related backup, disaster recovery, or other policies, practices, or procedures, is a material breach of this Agreement for which Customer, at its option, may terminate this Agreement immediately on written notice to Sourcereer without any notice or cure period, and Sourcereer shall promptly reimburse to Customer any fees prepaid by Customer prorated to the date of such termination. Sourcereer shall provide:

1. Notice of such breach to individuals whose data was compromised by such breach ("Affected Individuals").
2. Reasonably necessary notice of such breach to government agencies and credit bureaus.
3. Affected individuals with credit protection services designed to prevent fraud associated with identity theft crimes for a specific period not to exceed twelve (12) months, except to the extent applicable law requires a longer period for such credit protection services, in which case such longer period shall apply.
4. Reasonable call center support when applicable for affected individuals for up to ninety (90) days, except to the extent applicable law requires a longer period of time for such call center support, in which case such longer period shall then apply.
5. Computer forensics work reasonably required to investigate the breach.

#### **INDEMNIFICATION**

Customer agrees to indemnify, defend and hold harmless Sourcereer and its subsidiaries, affiliates, directors, agents, officers and employees (collectively, the Customer Indemnities) from and against any and all losses, liabilities, costs (including reasonable attorneys' fees) and damages as a result of any claims, demands, suits or proceedings relating Customer's gross negligence, or willful misconduct in connection with this Agreement or the performance of the Services under this Agreement, Sourcereer's material breach any representation, warranty, or covenant made herein by Sourcereer, and/or any allegations that the Services and/or Deliverables as provided by Sourcereer or used by Customer within the scope of this Agreement and the applicable SOW infringe or misappropriate any trade secret(s), patent(s) or copyright(s) or other intellectual property or proprietary rights of any kind.

#### **LIABILITES**

In no event shall Sourcereer be liable for any special, indirect, consequential, incidental, or punitive damages, whether arising under contract, warranty, tort, negligence, strict liability or any other theory of liability.

#### TERM AND TERMINATION

This Agreement shall commence on the Effective Date and shall continue unless terminated in accordance with this Agreement.

Customer reserves the right to cancel this Agreement or any SOW hereunder at any time for any reason upon sixty (60) days' notice. Notwithstanding the above provisions of this Agreement, either party may immediately terminate this Agreement at any time in the event of any of the following:

1. The other party's insolvency or bankruptcy, an attempted or actual assignment for the benefit of creditors, or the appointment of a trustee or receiver for the benefit of creditors, which is not dismissed within sixty (60) days.
2. The material breach by the other party of any of the provisions of this Agreement which breach remains uncured ten (10) days after receipt of written notice of the breach and request for cure.
3. The existence of a condition of force majeure for longer than six (6) months.

In the event of Customer's breach of this Agreement or default under any provision of this Agreement and failure to cure such Breach or default within ten (10) days after notice from Customer, bankruptcy, reorganization, receivership, insolvency, or making an assignment for the benefit of creditors, or evidence of financial or organizational instability, Sourcereer has the right, in addition to any rights or remedies it may have in law, in equity, or under this Agreement, to immediately cancel this Agreement for cause by written notice to Customer. Upon termination by Sourcereer as a result of Customer's default hereunder, Customer will be liable to and will immediately reimburse Sourcereer for all costs of any nature in excess of the applicable price under this Agreement which may be incurred by Sourcereer to effect completion of performance pursuant to this Agreement or any issued SOWs thereunder.

Upon the expiration or termination of this Agreement for any reason, all licenses granted by a party to the other under this Agreement shall terminate immediately except as and to the extent specifically set forth herein or otherwise pursuant this Agreement, subject to the surviving terms of this Agreement. After termination of this Agreement for any reason, each party shall erase, destroy or return to the other party all copies of the other party's Confidential Information. Upon either party's request, the other party shall certify in writing that it is in compliance with this Agreement.

If Customer terminates the Agreement early for any reason, Sourcereer shall repay, on a pro rata basis, all fees, expenses and other amounts paid in advance by Customer from the date of termination through natural expiration of the original term.

All Customer data shall be returned upon termination of the agreement or earlier, as requested by Customer, in an industry-standard format or the format in which it was provided.

#### TRANSITION ASSISTANCE

Upon termination of this Agreement, Sourcereer will provide any necessary data and support to move functionality and information from the system under this Agreement to the new agreement for a transition fee.

Sourcereer shall, immediately upon termination of this Agreement:

6. Promptly return, destroy and erase from all systems it directly or indirectly uses or controls, all originals and copies of all documents, materials, and other embodiments and expressions in any form or medium that contain, reflect, incorporate, or are based on Customer's Confidential Information, in whole or in part, or solely such specific databases or other collections or articles of Customer's Confidential Information as Customer may request.

7. Promptly return customer data to Customer, including the computers, software, databases, electronic systems (including database management systems), and networks, of Customer or any of its designees (collectively, "Customer Systems"), taking all steps required or reasonably requested, at Sourcereer's sole expense, to make an orderly transition of the Services to the Customer Systems.

8. Promptly return all Customer data as requested by Customer, in an industry-standard format or the format in which it was provided.

#### **DELIVERY**

Time of delivery is of the essence in this Agreement. Sourcereer shall deliver all Deliverables and Services in accordance with Customer's instructions in the SOW. Sourcereer covenants and agrees to perform its obligations in strict accordance with delivery schedules appearing within a SOW.

In the event that Customer reasonably determines that Sourcereer will be unable to meet any delivery date(s) hereunder, Customer shall first provide a change order for a mutually agreed upon cure period. After providing Sourcereer such agreed upon cure period, the Customer thereafter has the right to pursue the remedies set forth in the provisions herein concerning default and termination for cause in addition to pursuing any remedies or claims for liquidated damages.

#### **TESTING AND ACCEPTANCE**

Payment for Services or Deliverables delivered hereunder shall not constitute Customer's acceptance thereof. When Sourcereer notifies Customer in writing that the Services are ready for use in a production environment, Customer shall have 10 days (or such other period as may be expressly set forth in the applicable SOW, from receipt of the notice to test the Services to determine whether they comply in all material respects with the requirements of this Agreement and the specifications. Upon completion of Customer's testing, Customer shall notify Sourcereer of its acceptance or, if it has identified any noncompliance with the specifications, rejection of the Services. If Customer rejects the Services, Customer shall provide a written list of items that must be corrected. On receipt of Customer's notice, Sourcereer shall promptly commence, all reasonable efforts to complete, as quickly as possible and in any event within 30 days from receipt of Customer's notice (or such other period as may be agreed upon by the parties in writing), such necessary corrections, repairs, and modifications to the Services to bring them into full compliance with the specifications as detailed within the SOW.

If Sourcereer cannot bring the Services into full compliance with the specifications in the SOW, Customer may terminate the SOW in part of full and/or this Agreement upon written notice.

#### **INSURANCE**

Sourcereer and its subcontractors shall have in effect, at all times during the period of this Agreement and any extensions or until all work required by the Agreement has been completed, insurance coverage. Sourcereer shall provide insurance certificates documenting coverage upon written request from Customer.

All insurance shall be issued by insurance carriers licensed to do business under the laws of the country, state, commonwealth, province, or territory in which Sourcereer's obligations are provided, and with a rating of not less than A- VII, as rated in the most currently available "Best's Insurance Guide." Sourcereer shall cause its insurers to issue certificates of insurance evidencing that the coverages and policy

endorsements required under this Agreement are maintained in force and that not less than 30 days written notice shall be given to Sourcereer prior to any material modification, cancellation, or non-renewal of the policies.

Sourcereer shall agree that the insurance will not be canceled or reduced without at least thirty (30) days' written notice to the Customer.

#### NON-RESTRICTIVE RELATIONSHIP

Nothing in this Agreement shall be construed as requiring Customer to contract any work to Sourcereer or to prevent Customer from independently developing or entering into agreements for similar work with other third parties. Similarly, nothing in this Agreement shall be construed to prevent Sourcereer from independently developing or entering into agreements to provide similar work with other third parties. In performing this Agreement, Sourcereer and any and all third parties used by Sourcereer in connection with Sourcereer's performance of this Agreement (its "Subcontractors") shall act as independent contractors and not as agents for or employees of Customer. The use of any subcontractors on customer's projects must be specifically set forth in the applicable SOW or otherwise be approved in advance in writing by Customer. The relationship created by this Agreement is a contract for services and nothing herein contained is intended to nor shall it create the relationship of a partnership, joint venture or employer-employee between the parties.

#### NON-COMPETITION OBLIGATION

Sourcereer invests significant time and resources in recruiting, training, and retaining highly skilled and experienced technicians and other team members to best meet the needs of our customers. Accordingly, these individuals are exclusively employed by Sourcereer and subject to non-compete and other contractual limitations. Recognizing such, you as our Customer agree that you will not attempt to engage the services of our staff outside of the exclusive relationship with Sourcereer in any of the agreed upon SOWs. Customers may not retain, hire, employ, consult with, or otherwise utilize the services of Sourcereer staff outside of the services, as provided by Sourcereer. Moreover, and to the extent Sourcereer becomes aware of any improper conduct or attempts to inappropriately use or employ Sourcereer staff in violation of this provision, Sourcereer will take any and all means necessary to address such issues, including but not limited to the termination of all Sourcereer services, enforcement of pertinent non-compete or other agreements against Customer or Customer's employees, or other legal action to protect Sourcereer interests.

#### NOTICE

Any notice or other communication under this Agreement shall be in writing and effective when delivered in person or, if mailed, when deposited in the U.S. Mail, by registered or certified mail, return receipt requested or, if transmitted by e-mail, when email by means confirming receipt, addressed to the other party as follows:

If to Sourcereer:	If to Customer:
[Name]	[Name]
[Title]	[Title]
[Street Address]	[Street Address]
[Email Address]	[Email Address]

#### FORCE MAJEURE



In the event of delay or inability to deliver or perform any obligation under this Agreement caused by any reason beyond a party's reasonable control, including acts of God, any government authority or the public enemy, epidemic, quarantine restrictions, strikes, freight embargoes, unusually severe weather, fires, floods, , or voluntary or mandatory compliance with any governmental act, regulation or request, the parties may, without penalty or liability, extend times of performance to the earliest time deemed feasible by mutual agreement of the parties hereto.

#### MISCELLANEOUS

This Agreement and/or each party's rights and obligations under this Agreement may not be assigned or transferred by Sourcereer without Customer's prior written consent; provided, however, that Sourcereer may subcontract its obligations to subcontractors as provided herein and provided, further, that either party may assign or transfer this Agreement to a subsidiary or Affiliate of such party provided the assigning party remains liable for its subsidiary's or affiliate's performance of the Agreement or any third party which acquires all or substantially all of such party's stock or in the case of Customer, a significant subsidiary or major business unit or assets to which this agreement pertains, whether by merger, reorganization, acquisition, sale or otherwise, upon notification to the other party so long as the surviving party in such transaction is not a competitor of the other party. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns, provided that any such assignee shall agree to perform the provisions of this Agreement, including all obligations assumed hereunder.

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws provisions. The International Convention for the Sale of Goods shall not apply to this Agreement.

Sourcereer shall not assign any of its rights or interest in this contract or all or substantially all of its performance of this contract without Customer's prior written consent.

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect. The parties agree to negotiate in good faith a substitute, valid and enforceable provision which most nearly effects the parties' intent in entering into this Agreement.

Neither party's failure to exercise any of its rights hereunder shall constitute or be deemed a waiver or forfeiture of any such rights.

This document represents the entire agreement between the parties as to the matters set forth herein and supersedes all prior discussions or understandings between them. This Agreement may be modified only by a writing signed by an authorized representative of Sourcereer and Customer.

This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, Customer and Sourcereer have executed this Agreement as the date first written above.

**SOURCEREE**

**CUSTOMER**



Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

**Exhibit A**

NDA

**Exhibit B**

Customer Information Security Disclosures if applicable

**Exhibit C**

Statement of Work including billable rates

**EXHIBIT F**

PA Tax Exemption Form Rev-1220 or relative state form if applicable