

LOYALTY, INC (LOYALTY) MASTER TERMS AND CONDITIONS

LOYALTY MAY AMEND THESE TERMS AND CONDITIONS AT-WILL WITHOUT PROVIDING FURTHER NOTICE TO CLIENT.
THE MOST CURRENT VERSION OF THIS AGREEMENT CAN BE FOUND ON LOYALTY'S WEBSITE.

1. SCOPE OF AGREEMENT, ADDITIONAL TERMS AND CONDITIONS. The terms and conditions set forth herein apply to Client's and its Affiliates' purchases from LOYALTY, or any of its Affiliates, of any services ("**Services**"), as well as licenses for software, hardware, subscription services, and / or any other tangible or intangible good (collectively, "**Product**"). For purposes of the parties' Agreement, "**Affiliate**" means any entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or under common control with Client or LOYALTY, as the case may be.

This Agreement shall govern the parties' relationship as it relates to any Product or Services. However, in addition to (and not in substitution of) this Agreement, Client may be required to execute one or more addenda ("**Addenda**"), and may be required to execute a separate written or electronic order form, a quote, or other mutually acceptable order documentation (referred to generally as the "**Quote**"). Any Services to be rendered to Client must be further described in one or more Statements of Work. In the event of any conflict between the terms of the Statement of Work and those of this Agreement, the terms of the Statement of Work will prevail.

BY SIGNING THE QUOTE CLIENT IS AGREEING TO BE BOUND TO THE TERMS OF THIS AGREEMENT AND ANY STATEMENT OF WORK ACCOMPANYING THE QUOTE.

2. TERM AND TERMINATION. This Agreement will begin on the Effective Date and will continue until each Addendum or Statement of Work expires or is terminated. LOYALTY may: (a) terminate a specific Quote if Client fails to pay any applicable fees due for that Quote within twenty (20) days after receipt of written notice from LOYALTY of non-payment; and/or (b) terminate this Agreement if Client commits any other material breach of this Agreement (or any Addendum), and fails to cure such breach within twenty (20) days after receipt of written notice from LOYALTY. Upon any termination of this Agreement, Client will immediately uninstall (if the Product is software) and cease to use the Product and, upon LOYALTY's written request, immediately return such Product to LOYALTY, together with all related documentation requested by LOYALTY. Upon written request of LOYALTY, Client will promptly certify in writing to LOYALTY that all copies of the Product have been returned, and that any copies not returned have been destroyed. Additionally, Client will promptly pay LOYALTY for all Services rendered and expenses incurred through the termination date. LOYALTY may terminate any license granted for a Deliverable (as defined below) if (i) Client does not pay LOYALTY for that Deliverable in accordance with this Agreement, or (ii) if Client materially breaches any part of Section 4 of this Agreement.

3. PAYMENT AND DELIVERY. Client will pay LOYALTY all fees due upon receipt of an invoice specifying the amounts due ("**Fees**"). All Fees payable under this Agreement are exclusive of sales, use, VAT, customs duties, excise, and any other applicable transaction taxes, which Client will pay (excluding taxes based upon the net income of LOYALTY). All Product is FOB shipping point. All Fees will be detailed in an Quote. Unless otherwise stated in a

Statement of Work, Client agrees to pay or reimburse LOYALTY for all actual, necessary, and reasonable expenses incurred by LOYALTY in performance of such Statement of Work, which are capable of verification by receipt. LOYALTY will submit invoices to Client for such fees and expenses either upon completion of the Services, or at stated intervals, in accordance with the applicable Statement of Work. All invoices not paid in full after twenty (20) days shall incur interest at the rate of 18% APR.

4. PROPRIETARY RIGHTS AND CONFIDENTIALITY.

4.1. Proprietary Rights. LOYALTY, or its Affiliates or licensors, retains all right, title and interest in any and all intellectual property, informational, industrial property and moral rights in the Product, and copies thereof. LOYALTY neither grants nor otherwise transfers any rights of ownership in the Product to Client. The Product is protected by applicable copyright and trade secrets laws, and other forms of intellectual property, informational and industrial property protection.

4.2. Product. Client may only use and disclose Product in accordance with the terms of this Agreement and applicable Addenda. LOYALTY reserves all rights in and to the Product not expressly granted in this Agreement. Client may not disassemble or reverse engineer any software Product, or decompile or otherwise attempt to derive any software Product's source code from executable code, except to the extent expressly permitted by applicable law despite this limitation, or provide a third party with the results of any functional evaluation, or benchmarking or performance tests on the Products, without LOYALTY's prior written approval. Except as expressly authorized in this Agreement or an Addendum, Client may not (a) distribute the Product to any third party (whether by rental, lease, sublicense or other transfer), or (b) operate the Product in an outsourcing or service provider business to process the data of third parties. Additional usage restrictions may apply to certain third-party files or programs embedded in the Product - applicable installation instructions or release notes will contain the relevant details.

4.3. Services Deliverables Licensed Under This Agreement

(a) License. Subject to the terms of this Agreement, LOYALTY grants Client a perpetual, non-exclusive, non-transferable license to use and modify all programming, documentation, reports, and any other digital deliverables provided as part of the Services (the "**Deliverables**") solely for its own internal use.

(b) Pre-Existing License Agreements. If Client is acquiring the Product from LOYALTY as a reseller for a third party, all restrictions, and other terms pertaining to the Product are found only in the applicable agreement provided with the Product by the original manufacturer of the Product (the "**OEM Agreement**"), and such OEM Agreement is only between Client and the third party owner of the Product. Each Quote for Product by Client shall only be effective upon written acknowledgment and acceptance of such Quote by LOYALTY. Further, any additional or

conflicting terms of Client's purchase order with this Addendum or the Agreement are rejected by LOYALTY.

(c) **Ownership.** LOYALTY owns all right, title and interest in the Deliverables, *including* all intellectual property rights embodied therein. Nothing in this Agreement is intended to or will have the effect of vesting in or transferring to Client rights in LOYALTY's or its Affiliates' or its or their suppliers' software, methods, know-how or other intellectual property, regardless of whether such intellectual property was created, used or first reduced to practice or tangible form in the course of performance of the Services, whether solely by LOYALTY or jointly with Client.

4.4 Mutual Confidentiality. This Section sets out the terms for identification of information which is considered confidential and proprietary by a party (the "**Discloser**"), and restrictions against use and disclosure of such Confidential Information after disclosure to the other party (the "**Recipient**").

(a) **Definition.** The term "**Confidential Information**" means all proprietary or confidential information that is disclosed to the Recipient by the Discloser, and includes, among other things (i) any and all information relating to products or services provided by a Discloser, its Client-related and financial information, source and executable code, flow charts, drawings, techniques, specifications, development and marketing plans, strategies, forecasts, and sales and marketing materials; (ii) the Product; and (iii) the terms of this Agreement. Confidential Information does not include information that Recipient can show: (A) was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser; (B) is or becomes a matter of public knowledge through no fault of Recipient; (C) is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or (D) is or was independently developed by or for Recipient.

(b) **Disclosure Restrictions.** Recipient may not disclose Confidential Information of Discloser to any third party without the prior written consent of Discloser.

(c) **Proprietary Legends.** Recipient may not remove, obscure, or alter any proprietary legend relating to the Discloser's rights on or from any form of Confidential Information of the Discloser, without the prior written consent of the Discloser, except as expressly authorized in an Addendum.

5. **ALLOCATION OF RISK**

5.1. Disclaimer of Damages. EXCEPT FOR VIOLATIONS OF SECTION 4, NEITHER PARTY, NOR ITS AFFILIATES AND LICENSORS, ARE LIABLE TO THE OTHER PARTY, OR ITS AFFILIATES OR LICENSORS, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PRODUCT (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST COMPUTER USAGE, AND DAMAGE OR LOSS OF USE OF DATA), EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IRRESPECTIVE OF THE NEGLIGENCE OF EITHER PARTY OR WHETHER SUCH DAMAGES RESULT FROM A CLAIM ARISING UNDER TORT OR CONTRACT LAW.

5.2. Limitation of Liability. EXCEPT FOR VIOLATIONS OF SECTION 4, LOYALTY'S LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT IS LIMITED TO THE GREATER OF THE AMOUNT PAID OR PAYABLE BY CLIENT FOR THE APPLICABLE PRODUCT.

5.3. Injunctive Relief. Both parties acknowledge that their violation of Section 4 may cause the other party immediate and irreparable harm. In the event of such breach, the breaching party agrees that the other party may seek, in addition to any and all other remedies available at law, an injunction, specific performance or other appropriate relief.

6. **SERVICES-SPECIFIC TERMS**

6.1. All Necessary Rights. If, as part of LOYALTY's performance of Services, LOYALTY is required to use, copy or modify any third party system (hardware, software or other technology) provided or licensed to Client, then prior to LOYALTY's performance of such Services, Client will acquire all rights necessary for LOYALTY to perform such Services.

6.2. Limited Warranty. LOYALTY warrants that it shall provide the services under this AGREEMENT in a commercially reasonable manner, consistent with industry standards. In the event an issue arises under this AGREEMENT with respect to the services provided hereunder, LOYALTY shall use commercially reasonable efforts to correct any issue under its control. The limit of LOYALTY's liability hereunder shall be LOYALTY's cost to correct any issue or the return of fees associated with the particular project or issue, but in no event such amount shall not exceed the fees paid to LOYALTY for the period of ninety (90) days prior to the incident giving rise to the issue under this warranty. Client agrees that the limit of LOYALTY's liability under this AGREEMENT shall be regardless of the nature of the claim, demand, or cause of action, including but not limited to, any claims of contractual liability, liability for misrepresentations or inducements of any kind, any product liability (whether based on negligence or strict liability). In the event of a breach of this warranty which remains uncured for a period of twenty (20) business days, in addition to the remedy set forth above, Client may terminate this AGREEMENT by providing written notice to LOYALTY. IN NO EVENT SHALL LOYALTY BE LIABLE FOR ANY LOST PROFITS, OR ANY PUNATIVE, SPECIAL, CONTINGENT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, EVEN IF LOYALTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. LOYALTY shall not be obligated to assume the defense of, or satisfy, any claim that might be made against Client by any other party. In addition, Client specifically undertakes to defend, indemnify, and hold LOYALTY harmless for any loss, claim, or damage, including all such claims by third parties resulting from Client use of third-party software, unless it was caused solely by the negligence or willful act of LOYALTY.

6.3. **Intellectual Property Indemnity**

(a) **Infringement Claims.** If a third party asserts a claim against Client asserting that the Deliverables and/or LOYALTY's performance of the Services in accordance with the terms of this Agreement violates a patent, trade secret or copyright (an "**Intellectual Property Right**")

owned by that third party ("**Infringement Claim**"), then LOYALITY will, at its own expense: (a) defend or settle the Infringement Claim; and (b) indemnify Client for any damages finally awarded against Client, but only if Client promptly notifies LOYALITY of any Infringement Claim, LOYALITY retains sole control of the defense of any Infringement Claim and all negotiations for its settlement or compromise, and Client provides all reasonable assistance requested by LOYALITY. LOYALITY will not be liable for any expenses or settlements incurred by Client without LOYALITY's prior written consent.

(b) **Remedies.** If an injunction or order is obtained against LOYALITY performing the Services for Client and/or Client using the Deliverables by reason of the allegations of infringement, or if in LOYALITY's opinion the Services and/or Deliverables may violate a third party's proprietary rights, then LOYALITY will, at its expense: (a) procure for Client the right to continue to receive the Services and/or use the Deliverables; (b) modify or replace the Services and/or Deliverables with a compatible, functionally equivalent substitute; or (c) if neither (a) nor (b) are commercially practical, terminate this Addendum and release Client from its obligation to make future payments for the Services and/or Deliverables. Sections 5.1 and 5.2 contain Client's exclusive remedies and LOYALITY's sole liability for claims of infringement.

6.4. Insurance. LOYALITY will provide and maintain during its rendition of the Services, but only for losses arising out of LOYALITY's work for Client: (a) Worker's Compensation and related insurance as prescribed by the law of the state applicable to the employees performing such Services; (b) employer's liability insurance with limits of at least one million dollars (\$1,000,000) for each occurrence; (c) comprehensive/commercial general liability insurance including products liability with one million dollars (\$1,000,000) per occurrence combined single limit and two million dollars (\$2,000,000) general aggregate, including coverage for the use of subcontractors, products liability and completed operations, and not containing an exclusion for explosion, collapse and underground coverage; (d) comprehensive motor vehicle liability insurance, including coverage for owned, hired, leased, rented and non-owned vehicles of at least one million dollars (\$1,000,000) for combined single limit for bodily injury, including death, and/or property damage; and (e) professional liability insurance covering the effects of errors and omissions in the performance of professional duties in the amount of one million dollars (\$1,000,000) for each occurrence and in the aggregate associated with Services.

6.5. Independent Contractor. Nothing in this Agreement will be construed to make either party an employer, employee, agent or partner of the other, and this Agreement will not be construed to create rights, express or implied, on behalf of or for the use of any party other than LOYALITY and Client. All of the Services performed by LOYALITY will be performed as an independent contractor. LOYALITY will perform such Services under the general direction of Client, but LOYALITY will have sole discretion to determine the manner, method and means of performing such Services subject to the provisions of this Agreement and applicable Statement of Work. Neither party will have any authority to make any contract in the name of or otherwise to bind the other party. LOYALITY will be responsible for and will pay all unemployment, social security and other payroll taxes, and all worker's compensation claims, worker's compensation insurance

premiums and other insurance premiums, with respect to LOYALITY and LOYALITY's employees.

6.6. Mutual Non-Solicitation. During the term of this Agreement, and for a period of twelve (12) months thereafter, neither party will solicit for employment any employees of the other party or its affiliates who, within twelve (12) months prior to such solicitation: (a) directly performed under this Agreement, (b) had substantial contact with the hiring party in relation to this Agreement, or (c) the hiring party became aware of due to, or derived from information learned through the performance of, this Agreement. For this purpose, "solicitation" does not include contact resulting from indirect means such as public advertisement, placement firm searches or similar means not directed specifically at the employee to which the employee responds on his or her own initiative. Notwithstanding the foregoing, either party may at any time, directly or indirectly, solicit and hire any employee of the other party if such employee did not resign but was terminated by the other party. The parties acknowledge and agree that a breach of this "Non-Solicitation" clause will not give rise to a right of termination of this Agreement; the party not in breach will only have the right to seek and recover direct damages, of twenty (20) percent of employee's annual salary from the breaching party.

6.7. Mutual Indemnity. Each party will indemnify, defend and hold harmless the other party from all claims, liabilities or expenses for physical damage to real property or tangible personal property and bodily injury, including death, to the extent caused by the gross negligence or willful misconduct of the indemnifying party's employees or contractors arising out of this Agreement and while at the Client's premises. The foregoing indemnities are contingent upon the party seeking indemnity giving prompt written notice to the indemnifying party of any claim, demand or action, and cooperating with the indemnifying party in the defense or settlement of any such claim, demand or action.

7. MISCELLANEOUS/OTHER PROVISIONS.

7.1. Severability. Should any provision of this Agreement be invalid, or unenforceable, the remainder of the provisions will remain in effect. In the event of a dispute, the prevailing party in any litigation or arbitration will be entitled to recover its attorneys' fees and cost incurred from the other party.

7.2. Notices. Unless otherwise provided, notices to either party will be in writing to the address indicated above, or as later amended, and deemed effective when received.

7.3. Verification. Upon LOYALITY's written request, Client will provide LOYALITY with a certification signed by an officer of Client verifying that Product is being used pursuant to the terms of this Agreement, including without limitation the licensed capacity of the Product. LOYALITY may, at its expense, audit Client's use of Product to confirm Client's compliance with this Agreement. Any such audit will be conducted during regular business hours at Client's facilities and will not unreasonably interfere with Client's business activities. If an audit reveals that Client has underpaid Fees to LOYALITY, Client will pay such underpaid Fees. If the underpaid Fees exceed five percent (5%) of the Fees paid, then Client will also pay LOYALITY's reasonable costs of conducting the audit.

7.4. Assignment. Client may not assign this Agreement or any rights granted in this Agreement to any third party, except with the prior written consent of LOYALTY. LOYALTY may assign this Agreement upon providing written notice to Client.

7.5. No Waivers. Failure of a party to require performance by the other party under this Agreement will not affect the right of such party to require performance in the future. A waiver by a party of any breach of any term of this Agreement will not be construed as a waiver of any continuing or succeeding breach.

7.6. Force Majeure. Any delay or failure of any party to perform any obligation under this Agreement caused by governmental restrictions, labor disputes, storms or natural disasters, emergency, or other causes beyond the reasonable control of the party, will not be deemed a breach of this Agreement. This provision does not apply to the payment of monies or any breach of Section 4.

7.7. Entire Agreement. This Agreement, together with each Addendum and Quote, constitutes the entire agreement between Client and LOYALTY, and supersedes any prior or contemporaneous negotiations or agreements, whether oral or written, concerning this subject matter. This Agreement, and each Addendum and Quote, may be modified only in a mutually signed writing between Client and LOYALTY. In the event of a conflict between this Agreement and, any Addendum or an Quote, the terms of the Quote will control, followed by the terms of the applicable Addendum and then this Agreement.

7.8. Export Controls. Client will cooperate with LOYALTY as reasonably necessary to permit LOYALTY to comply with the laws and regulations of the United States and all other relevant countries, relating to the control of exports ("Export Laws"). Client may not import, nor export or re-export directly or indirectly, including via remote access, any part of the Product into or to any country for which a validated license is required for such import, export or re-export under applicable Export Laws, without first obtaining such a validated license.

7.9. Referencing. Client agrees that LOYALTY and its Affiliates may refer to Client as a Client of LOYALTY, both internally and in externally published media. Client also agrees to instruct appropriate personnel within its organization that Client has agreed to receive and

participate in calls, from time to time, with potential Clients of LOYALTY who wish to evaluate the technical specifications of Product.

7.10. Governing Law & Dispute Resolution. This Agreement shall be governed by the laws of the State of Wisconsin. If there is any dispute between the parties arising out of this Agreement, the parties agree to submit said dispute to binding arbitration. Arbitration shall be commenced by one party serving a written demand upon the other, via certified mail, who shall have 20 days to respond. Within 14 days of responding, the parties shall mutually agree upon the appointment of an arbitrator. If the parties cannot agree, they shall request the Chief Judge of the 8th Judicial District to appoint an arbitrator. The place of arbitration shall be at a place of the arbitrator's choosing, or a location otherwise agreed to by the parties. Wisconsin substantive law shall apply during such arbitration, and Wis. Stat. Sec. 799.209 shall generally govern hearing procedure. The arbitrator shall have full discretion to establish limits on discovery and scheduling. The responsibility for payment of the cost of the arbitrator and the costs and reasonable attorneys' fees of the parties incurred in connection with the arbitration shall be allocated among the parties by the arbitrator. The arbitrator's decision shall be made not more than 120 days after the date of the first party's demand for arbitration. Judgment upon the arbitration award may be entered in any court having jurisdiction thereof, on the request of any party. The parties acknowledge that they are not entitled to, and hereby waive, any right to a jury trial as a result of any controversy or claim under this Agreement. Each party agrees to keep confidential the subject matter and result of the arbitration, unless disclosure of some or all of the information is required by law, or unless all parties agree otherwise. The Arbitrator shall have the authority to compel the parties to attend pre-hearing mediation.

7.11. Survival. Sections 2, 4, 5, 6 and 7 will survive the termination or expiration of this Agreement.

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