

Master Services Agreement

Updated September 9, 2021

Dalechek Technology Group

This MASTER SERVICES AGREEMENT (“Agreement”) is made and entered into by and between **Dalechek Technology Group**, an Illinois S Corporation, (“Company”) and the client that is executing this Agreement (hereinafter “Client”) with Dalechek Technology Group and this Agreement shall govern the Services (as defined below) provide by Dalechek Technology Group for the Client as referenced herein.

WHEREAS, Company is engaged in the business of providing a full range of information technology consulting services; and

WHEREAS, Client desires to retain Company to perform certain information technology services and functions;

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the parties agree as follows:

1. AGREEMENT STRUCTURE

- 1.1 This Agreement is a master information technology services contract that contemplates the performance of specific tasks and functions by the Company for the Client. In addition to the terms and conditions of this Agreement, the business arrangements between the Company and the Client may also be documented in an accompanying Managed Services Provider Agreement (“MSP Agreement”) or Statement of Work (“SOW”). Any such MSP Agreement and/or SOW is incorporated herein by reference in its entirety.
- 1.2 All of the terms of this Agreement shall apply to all services and functions performed by Company on or after the Effective Date, unless specifically modified by a clause in an executed MSP Agreement or SOW.
- 1.3 Should there be any conflict between the provisions, agreements, terms and conditions of this Agreement and any executed MSP Agreement or SOW, then notwithstanding anything contained in this Agreement, the provisions, agreements, terms and conditions of the executed MSP Agreement or SOW shall govern and control.
- 1.4 Any modification of this Agreement or any executed MSP Agreement or SOW, will be effective only if in writing and signed by both parties. Execution of any said modification will constitute a binding representation by each party that the signatory to said modification is authorized to legally and contractually bind the party thereto.

2. TERM AND TERMINATION

- 2.1 **Agreement Term.** The term of this Agreement shall commence on the Effective Date

and will continue in effect for period of one (1) year (“Initial Term”) or until the expiration date of, if executed, any MSP Agreement (as described in Section 4.2) or the last SOW (as described in Section 4.1 hereof) has been completed.

2.2 Termination of Agreement. Either party may terminate this Agreement in its entirety upon sixty (60) days’ advance written notice if:

- 2.2.1** one of the parties shall be declared insolvent or bankrupt;
- 2.2.2** a petition is filed in any court and not dismissed in ninety (90) days to declare one of the parties bankrupt and/or for reorganization under the Bankruptcy Law or any similar statute;
- 2.2.3** a Trustee in Bankruptcy or a Receiver or similar entity is appointed for one of the parties;
- 2.2.4** Client does not pay Company within thirty (30) days from receipt of Dalechek’s invoices and/or otherwise materially breaches this Agreement;
- 2.2.5** Company fails to perform its obligations under this Agreement, any executed MSP Agreement and/or any executed SOW and such failure continues for a period of thirty (30) days after written notice of the defaults.

Upon notice of termination, Company shall advise Client of the extent to which performance has been completed, and deliver to Client whatever Deliverables (as defined in Section 4.1) then exist, along with all Client Materials (as defined in Section 6.5). Client shall pay for all services performed through the effective date of termination.

2.3 Survival. Sections 6, 7, and 8 hereof shall survive termination (regardless of the reason for termination) or expiration of this Agreement.

3. INDEPENDENT CONTRACTOR STATUS

3.1 Intention of Parties. Company shall be an independent contractor and not an employee, agent, joint venturer, or partner of Client. Nothing in this Agreement shall be construed as establishing the relationship of employer and employee between Client and Company for any purpose. Further, Company and Client agree that nothing in the Agreement and/or any executed MSP Agreement or SOW, will authorize or empower either party to speak for, represent, or obligate the other party in any way.

3.2 Each party shall pay, as required by law, all payroll or self-employment taxes and similar required payments and withholdings with respect to that party’s employees relating to the services performed hereunder.

3.3 Neither party shall not provide the other party with any training, insurance, retirement, health, welfare, or other benefits usually afforded to employees or that may be inconsistent with Company’s status as an independent contractor.

4. SERVICES TO BE PERFORMED BY COMPANY

4.1 (if) SOWs. The specific services to be performed by Company may be documented in a SOW signed by Company and by Client. Each SOW shall set forth, at a minimum, a description of the services to be performed, and the fees for the services to be performed, or other mutually agreed-upon

price and payment terms (e.g., firm fixed price, progress payments based on deliverables, etc.). Company shall render services and deliver reports and other deliverables (collectively “Deliverables”) in accordance with the timetable and milestones (if any) in the applicable SOW. If any Deliverables are subject to acceptance testing by Client, the SOW will so state and will describe the acceptance procedures. In the event Company anticipates at any time that it will not reach a milestone or complete an assignment within the timetable prescribed by a SOW, Company shall promptly so inform Client, submit proposed revisions to the timetable and milestones that reflect Company’s best estimates of what can realistically be achieved, and continue to work until otherwise directed by Client. Company shall also prepare and submit standard reports of its performance and its progress that are usual and customary in the industry at no additional charge to the Client. Should Client request additional more extensive reporting, Company shall provide such extensive reporting on a billable basis.

4.2 (if) MSP Agreement. The specific services and functions to be performed by Company may be documented in MSP Agreement signed by Company and by Client. The MSP Agreement shall set forth, at a minimum, a description of the services to be performed, and the fees for the services to be performed, or other mutually agreed-upon price and payment terms (e.g., firm fixed price, progress payments based on deliverables, etc.). Company shall provide pricing for each user, device or services it is responsible for remote monitoring and management; maintenance schedules and additional services or functions defined in MSP Agreement. Company shall render services and deliver reports and other Deliverables in accordance with the timetable and milestones (if any) in the applicable MSP Agreement. In the event Company anticipates at any time that it will not reach a milestone or complete an assignment within the timetable prescribed by a MSP Agreement, Company shall promptly so inform Client, submit proposed revisions to the timetable and milestones that reflect Company’s best estimates of what can realistically be achieved, and continue to work until otherwise directed by Client.

4.3 Method of Performing Services.

4.3.1 Company represents that it has the requisite expertise, ability, and legal right to render the services contemplated by this Agreement and/or any executed MSP Agreement or SOW. Company will perform said services in a professional, efficient, and conscientious manner. Company further represents that: (i) its performance of said services will in no way conflict with any non-compete agreement or other engagement/consulting restriction to which it may be bound; and (ii) its performance of said services will in no way be considered a conflict of interest by any current or any former client. Company will abide by all laws, rules and regulations that apply to the performance of said services.

4.3.2 Company will determine the method, details, and means of performing its services hereunder, and Client shall have no right to, and shall not, control specific details of the manner or method of accomplishing the services. Client may, however, require Company to observe the security, safety, and similar policies of Client and of any third party on whose premises or equipment Company may perform the services. In addition, Client may exercise a broad general power of supervision and control over the results of the services performed by Company to ensure satisfactory performance, including the right to inspect, stop work, make suggestions as to the details of the work, and request modifications to the scope of the said SOW or MSP Agreement.

4.4 Acceptance Procedure. Company shall perform reasonable discovery or assessment and

provide findings/results to Client in writing. Client shall advise Company of the acceptance or rejection of said findings by Company in writing within two business days. Any rejection by Client shall allow Client to determine whether to continue or cancel the specific services in the SOW or MSP Agreement.

4.5 Scheduling. Company will accommodate work schedule requests of Client to the extent practicable. Should Company be unable to perform because of illness, resignation, or any other causes beyond Company's control, Company will use best efforts to resume work promptly.

5. COMPENSATION

5.1 Rates and Expenses. The schedule of fee rates for services performed by Company shall be included in each SOW or MSP Agreement. Unless otherwise specified in a SOW or MSP Agreement, any services requested by Client and performed by Company that are not specified in a SOW or MSP Agreement will be billed at an agreed upon rate based on criteria of services requested, i.e. "Emergency Rate" vs. "Scheduled Rate". Company will invoice for travel to Client site(s) that is more than 60 miles from Company location stated in this Agreement at the rate of \$100.00 per hour for the duration of the travel. Except for reasonable travel, lodging, and meal expenses incurred in accordance with Client's expense reimbursement policies while traveling at Client's request, and except as otherwise agreed in the applicable SOW or MSP Agreement, Company shall be responsible for all its costs and expenses incident to the performance of services for Client.

5.2 Estimates. Estimates of total fees for projects may be provided in a SOW or MSP Agreement, but Company does not guarantee these estimates unless so stated in the SOW or MSP Agreement as a fixed fee or not-to-exceed price. Company will, however, notify Client in writing if it expects to substantially exceed, ten (10) percent, any estimate. Client will then be allowed to determine whether to continue or cancel the specific services in the SOW or MSP Agreement.

5.3 Invoices and Payment. Unless provided otherwise in a SOW or MSP Agreement (e.g., invoicing upon completion of milestones or upon acceptance of Deliverables), Company shall invoice Client monthly for the services furnished and reimbursable expenses incurred hereunder. Each invoice will provide a daily breakdown, including identity of relevant personnel, tasks performed, and of all reimbursable expense items. Unless otherwise agreed in a particular SOW, Company's fees are payable in full within thirty (30) days after receipt of the invoice. Unless otherwise agreed in a particular MSP Agreement, said purchase price shall be paid in monthly installments with the first installment due upon execution of the applicable MSP Agreement. Each payment thereafter shall be due the first day of each calendar month for applicable services to be performed for that particular month. Late payments are subject to interest accrued at 1.5% per month thereafter.

6. INTELLECTUAL PROPERTY RIGHTS

6.1(a) Confidentiality and Use of Information. Company will maintain in strict confidence, and use and disclose only as authorized by Client or by this Agreement, all Client Information (defined below) that it receives in connection with (i) this Agreement and or any executed SOW or MSP Agreement; and (ii) all Confidential Information that it receives in connection with this Agreement and/or any executed SOW or MSP Agreement. These nondisclosure obligations shall continue as to any Confidential Information for so long as that information meets the definition of Confidential Information (as defined below). Notwithstanding the foregoing restrictions, Company may disclose any information to the extent required by law or governmental authority, but only after Client has been so notified and has

had the opportunity to contest the requirement or to obtain reasonable protection for the information in connection with the disclosure.

6.1(b) Definitions.

(i) **“Confidential Information”** means information, without regard to form, related to Client’s business which is not commonly known by or available to the public and which (A) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (B) is the subject of efforts to maintain its secrecy that are reasonable under the circumstances. Such information may include, but is not limited to, operating and financial data and plans, trade secrets, know-how, processes, documentation, software and computer programs and derivative works (including any methods of application software access or infrastructure access, whether or not such access is via “front door” or “back door” methods or portals), inventions (whether patentable or not), improvements, copyrightable material, strategic plans, samples, sales methodologies, sales targets, marketing approaches, or any other information, whether previously, presently, or subsequently disclosed to Project Worker, and which may be communicated in any form.

(ii) **“Client Information”** means nonpublic information and Confidential Information obtained by Company through performing services under this Agreement and/or any executed SOW or MSP Agreement. By way of illustration only and not to limit the foregoing, “Client Information” includes Client’s nonpublic information about: (A) Deliverables, inventions, ideas, processes, formulas, data and data files and derivative works thereof, other works of authorship, know-how, improvements, discoveries, designs and techniques and the architecture, algorithms, and source and object code of software; (B) plans for research, development, new products, marketing, and business initiatives; and (C) budgets and financial statements, contract terms, prices and costs, suppliers and customers. Client shall identify Client Information for Company upon request. Client Information shall not include: (1) information generally available to the public; (2) information released by Client generally without restriction; (3) information previously known to Company or independently developed or acquired by Company without reliance on other protected information of Client; or (4) information approved by Client for use and disclosure by Company without restriction.

(iv) **“Third Party Information”** means Confidential Information of third parties (including but not limited to customers of Client) which Client is under a duty to treat as confidential or to use only for limited purposes.

6.2 Residual Rights of Company. Except as specifically otherwise provided in Sections 6.1 and 6.3, Company shall be free to use and employ its general professional skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, or skills that are used generally by Company in its business and that do not constitute or inherently disclose Client Information or Deliverables.

6.3 Ownership of Deliverables. Except to the extent otherwise specifically agreed in a SOW or MSP Agreement, all Deliverables shall belong exclusively to Client.

6.4 Ownership of Intellectual Property. Except to the extent otherwise specifically agreed in a SOW or MSP Agreement, all copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, software, programs, logic

diagrams, reports, data files, methodologies, or other works of authorship and other tangible materials developed or created by Company in performing services under this Agreement, (collectively, the “Intellectual Property”) shall belong to Company. Company automatically grants, at the time of creation of any Deliverable, without any requirement of further consideration, a perpetual, worldwide, royalty-free license and right to the Client for all such Intellectual Property for use on or in connection with any Deliverable.

6.5 Client Materials. All right, title, and interest in any materials or information furnished to Company by Client, and all derivative works or improvements thereof, are and shall remain the property of Client.

7. WARRANTIES AND LIMITATIONS

7.1 Warranties. Company warrants that:

7.1.1 In the performance of services hereunder, Company will not knowingly violate any applicable law, rule, or regulation; any contracts with third parties; or any third-party rights in any patent, trademark, copyright, trade secret, or similar right; and to the best of its knowledge Company is under no obligation to any third party that would in any manner prevent Company from performing the services required hereunder.

7.1.2 To the best of its knowledge Company has all rights necessary to convey to Client the unencumbered ownership of the Deliverables; and

7.1.3 All services will be performed in a workmanlike and professional manner by Company having a level of skill in the area commensurate with the requirements of the scope of services to be performed, and such services and all Deliverables shall substantially conform to the specifications of the applicable SOW or MSP Agreement.

7.2 Disclaimer. Except as is expressly set forth in Section 7.1 above, **Company does not make any warranty, express or implied**, with respect to the services rendered or the results obtained from its work, including, without limitation, any implied warranty of merchantability or fitness for a particular purpose. While Company will use all reasonable efforts to achieve a satisfactory outcome of the services, Company does not guarantee that specific results will be achieved and no warranty, express or implied is given as to any product, process, results, information, material, design, deliverable, advice, or any other work provided as a result of the services or functions.

7.3 Limitation of Liability. Without in any way limiting the foregoing, **in no event shall either party be liable to the other party or any third party for any special, incidental, consequential, exemplary or punitive damages of any kind** (including without limitation lost profits, lost savings, loss of data, and/or loss of business opportunities) arising out of or in connection with this Agreement, SOW or any MSP Agreement, Deliverable, or any services provided hereunder, whether based in contract, tort (including without limitation negligence) or otherwise, even if the party has been advised of the possibility of such damages or should have foreseen such damages.

7.4 Correction of Defective Work. In the event that any work performed by Company, or

any Deliverable hereunder, does not conform to the above warranties, Company shall promptly correct the same so that it does conform to the warranties.

7.5 Indemnification. Each party agrees to defend, indemnify and hold harmless the other party, and the officers, directors, shareholders, members, associates, affiliates, employees, attorneys, servants and agents of the indemnified party from and against all claims, liabilities, damages, losses, causes of action, or expenses (including reasonable attorneys' fees and costs), arising out of or relating to this Agreement or any executed MSP Agreement or SOW that are due to the negligent act or omission, or willful misconduct of the indemnifying party, its employees, agents, servants or subcontractors.

8. GENERAL PROVISIONS

8.1 Notices. Any notices hereunder may be given either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change such address by written notice in accordance with this paragraph. Notices will be deemed delivered upon actual receipt as evidenced by return receipt or similar documentation.

8.2 Assignment. Neither party shall assign this Agreement without the prior written consent of the other, which consent will not be unreasonably withheld, except that either party may assign this Agreement without consent in connection with (a) the sale or transfer of all or substantially all of its business, or (b) the sale or transfer of substantially all of that part of its business to which this Agreement relates. Each party shall give the other prompt written notice of such assignment or transfer.

8.3 Return of Client Materials. All materials, data, equipment, badges, or other items provided by Client to Company ("Client Materials") are to be used for the sole purpose defined in this Agreement or any executed SOW or MSP Agreement. Upon termination of this Agreement or any executed SOW or MSP Agreement, regardless of reason for termination, upon Client's written request, or upon discontinuance of use of the materials by Company, Company will return to Client the originals and all copies of the Client Materials, and any other Client Information.

8.4 Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

8.5 Parties in Interest. This Agreement is enforceable only by Company and Client.

8.6 Force Majeure. Neither party shall be liable to the other for any failure or delay to the extent caused by events beyond the first party's control (and which could not have been avoided in the exercise of reasonable diligence), including, failures or delays in transportation, equipment failures, labor disputes, accidents, acts of God, or government intervention.

8.7 Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of Missouri, without reference to its conflicts of law rules. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought exclusively in the appropriate state or federal courts located in the district of the U.S. District Court for the Eastern District of Missouri and the parties hereby consent to the jurisdiction of such courts.

8.8 Successors. This Agreement shall inure to the benefit of, and be binding upon, Company and Client, their successors and permitted assigns.

8.9 Non-Discrimination. Client and Company agree that they shall not discriminate against any employee or applicant on the basis of race, color, creed, national origin, ancestry, ethnicity, sex, sexual orientation, marital status, pregnancy, age, religion, disability, veteran status or any other basis prohibited by federal, state or local law.

9. NON-HIRE

Throughout the Terms of (i) this Agreement; and/or (ii) any executed MSP Agreement; and/or (iii) any SOW and for a period of one (1) year following the latest termination of any said contractual document, each party agrees not to solicit or directly recruit any employees of the other party without the other party's prior written consent

Each party agrees that the actual damages resulting from breach of this Employee Solicitation provision would be impracticable and extremely difficult to ascertain or compute. Therefore, in the event one party violates this provision, said party shall immediately pay the other party an amount equal to 100% of the solicited employee's total annual salary as liquidated damages. Further, the other party shall have the option to terminate this Agreement and/or any executed MSP Agreement or SOW without further notice or liability to the breaching party. The amount of the liquidated damages reflected herein is not intended as a penalty and is reasonably calculated based upon the projected costs Company would incur to identify, recruit, hire and train suitable replacements for such personnel.

9.1 Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

10. COMMUNICATIONS

All notices required under this Agreement shall be in writing and sent to the addresses and persons set forth below, or to such other addresses as may be designated by a party in writing. All notices shall be deemed received when: (i) delivered personally; or (ii) one (1) date after deposit with a commercial express courier specifying next day delivery, with written verification receipt.

IF TO THE CLIENT

To the address Client provided when signing up for the Services

IF TO DALECHEK TECHNOLOGY GROUP

Dalechek Technology Group
Attn: Contracts Department
502 Earth City Plaza, Ste 206
Earth City, MO 63045