



Master Services Agreement

FORM ID: C001 v3

NETWORKITECTS, INC.

MASTER SERVICES AGREEMENT

This Master Services Agreement (this "Agreement") is made between the entity you represent, or, if you do not designate an entity in connection with a Statement of Work purchase or renewal, you individually ("Customer") and Networkitects, Inc. (dba Diggio), a Texas corporation ("Networkitects").

In consideration of the mutual covenants, terms and conditions set forth in this Agreement, the parties agree as follows:

Section 1. SERVICES.

Networkitects will provide certain information technology services to Customer (the "Services"), as described in more detail in one or more statements of work signed by Networkitects and Customer that reference this Agreement (each, a "Statement of Work"), on the terms and subject to the conditions set forth in this Agreement.

Section 2. CUSTOMER'S RESPONSIBILITIES.

2.1 Customer shall:

(a) provide Networkitects' employees, agents, representatives, contractors and subcontractors (collectively, "Networkitects Personnel") with such physical and/or remote access to Customer's premises, equipment, electronic systems or other facilities as Networkitects reasonably requests, for the purposes of performing the Services;

(b) provide Networkitects Personnel with adequate workspace, heat, light, ventilation, electric current and outlets, Internet and remote access;

(c) keep and maintain any equipment, systems, or cabling provided by or on behalf of Networkitects and used directly or indirectly in the provision of the Services (the "Equipment") in good condition; and

(d) obtain and maintain all necessary licenses relating to the Services.

2.2 Customer acknowledges and agrees that Networkitects may, from time to time, at Networkitects' sole discretion and with or without notice to Customer, obtain remote access to any and all computers, servers, and other electronic equipment that are owned, leased or rented by Customer and that relate or pertain to the Services.

2.3 Customer will appoint an individual, in each applicable Statement of Work, to serve as the "Project Owner" under this Agreement. The Project Owner will be Networkitects' single point of contact and will exercise project leadership with the authority to make budget and technology decisions. All decisions of the Project Owner are binding on Customer. If Customer does not appoint a Project Owner, then Customer's primary point of contact (as determined in Networkitects' sole discretion) will be deemed the Project Owner.

2.4 In the event Networkitects' performance of its obligations under this Agreement is prevented or delayed by any act or omission by Customer or its directors, officers, shareholders, members, managers, employees, agents, independent contractors or representatives (collectively, "Customer Personnel"), Networkitects will not be deemed to be in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

2.5 Customer shall assume responsibility for the actions of Customer Personnel in relation to their use or consumption of the Services, and shall control Customer Personnel access to all data residing on our making use of the Services where applicable.

2.6 Customer shall be solely responsible for the content of all “Customer Data”. Customer will secure and maintain all rights to Customer Data necessary for Networkitects provide the Services without violating the rights of any third party or otherwise obligating Networkitects to Customer or to any their party. Networkitects does not and will not assume any obligations with respect to Customer Data or to Customer’s use of Services other than as expressly set forth in this Master Services Agreement, any applicable Statement of Work, or as required by applicable law.

Section 3. TERM AND TERMINATION.

3.1 This Agreement shall commence on the Effective Date and shall continue thereafter until the completion of the Services under all Statements of Work, unless sooner terminated in accordance with Section 3.2.

3.2 Either party may terminate this Agreement and any Statement of Work, effective upon written notice to the other party (the “Defaulting Party”), if the Defaulting Party materially breaches this Agreement or any Statement of Work, and such breach is incapable of cure, or, with respect to a breach that is capable of cure, the Defaulting Party does not cure such breach within 15 days after receipt of written notice of such breach.

3.3 Upon termination of this Agreement for any reason:

(a) the term of any Statements of Work shall immediately terminate;

(b) Networkitects shall promptly remove any Equipment located at Customer’s premises and provide reasonable cooperation and assistance to Customer upon Customer’s written request and at Customer’s expense (at the Current Hourly Rates, as defined below) in transitioning the Services to an alternate service provider; and

(c) Customer shall promptly pay Networkitects all unpaid fees and reimbursable expenses then due under all Statements of Work.

3.4 The rights and obligations of the parties set forth in this Section 3.4 and Section 3.3, Section 4, Section 5, Section 6, Section 7, Section 8, Section 9 and Section 10 shall survive any such termination of this Agreement.

Section 4. FEES AND EXPENSES; PAYMENT TERMS.

4.1 For purposes of this Agreement, the following terms have the meanings set forth below:

(a) “Current Hourly Rates” means the Networkitects’ then-current hourly rates set forth at <http://www.diggio.com/legal/rates>, which rates are subject to change from time to time.

(b) “Monthly Base Rate” means the monthly base rate set forth in any Statement of Work.

(c) “Regular Service Hours” means 8:00 am to 5:30 pm Central Time, Monday through Friday, excluding Federal holidays.

4.2 Customer shall (a) pay Networkitects the fees set forth in the applicable Statements of Work; and (b) reimburse Networkitects for all reasonable travel and out-of-pocket expenses Networkitects incurs in connection with the performance of the Services.

4.3 Where the Services are provided on an hourly basis, (a) such Services will be provided at the Current Hourly Rates, unless otherwise set forth in an applicable Statement of Work; and (b) if such Services are provided outside of Regular Service Hours, the Services will be subject to resource and Networkitects Personnel availability and will be provided at 1.5 times the applicable hourly rates. Networkitects reserves the right to change the Current Hourly Rates at any time, provided that it shall provide the Customer with 30 days written notice before the change shall take effect.

4.4 Customer shall be responsible for all sales, use any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer under this Agreement.

4.5 Networkitects will issue invoices to Customer, and Customer shall pay all properly invoiced amounts due to Networkitects no later than the due date set forth in such invoices. In the event Networkitects has not received payment on or prior to such due date, Networkitects may (a) charge interest on any such unpaid amounts at a rate of 3% or, if lower, the maximum amount permitted by law, from the date such payment was due until the date paid; and (b) suspend performance of all Services until payment has been made in full.

4.6 The Monthly Base Rate set forth in any Statement of Work does not include the cost of any hardware, software, equipment, or supplies or any out-of-pocket expenses incurred by Networkitects unless otherwise set forth in such Statement of Work.

Section 5. OWNERSHIP OF WORK PRODUCT.

5.1 For purposes of this Agreement, the following terms have the following meanings:

(a) “Intellectual Property Rights” means all (a) patents, patent disclosures and inventions (whether or not patentable); (b) trademarks, service marks, trade dress, logos, corporate names and domain names, together with the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

(b) “Pre-existing Materials” means all documents, data, know-how, methodologies, software and other materials, including computer programs, reports and specifications, provided by or used by Networkitects in connection with its performance of the Services.

(c) “Third Party Materials” means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Networkitects.

(d) “Work Product” means all documents, work product and other materials that are delivered to Customer under this Agreement, prepared by or on behalf of Networkitects in the course of performing the Services or otherwise during the term of this Agreement, including through collaborative efforts of Networkitects (including Networkitects Personnel) and Customer, including Customer Personnel.

5.2 As between Networkitects and Customer, all Intellectual Property Rights, and all other rights in and to the Work Product and the Pre-existing Materials, shall be owned by Networkitects. Networkitects hereby grants Customer a non-exclusive, royalty-free license to use all such rights to the extent necessary to enable Customer to make reasonable use of the Work Product and the Services. Networkitects may terminate such license if

Customer discloses the Work Product or attempts to sell or assign, in any capacity, any rights or interest to the Work Product to any third party (including Networkitects Personnel and Customer Personnel) without the express written consent of Networkitects, which consent may be withheld for any reason or no reason. Upon Networkitects' request, Customer must execute and deliver to Networkitects all such documents as are reasonably necessary to transfer and convey any right or interest that Customer may have or claim to the Work Product to Networkitects, and must use reasonable efforts to cause Customer Personnel to execute similar documents.

5.3 Customer may not reverse engineer, decompile, disassemble, or work around technical limitations of Equipment or Services, except to the extent that applicable law permits it despite these limitations.

Section 6. NON-SOLICITATION.

6.1 During the term of this Agreement and for a period of one year thereafter, Customer may not, directly or indirectly, in any manner (a) solicit, induce for employment, or hire any Networkitects Personnel; (b) solicit or induce any Networkitects Personnel for the purpose of accepting employment or performing work with or for any third party; or (c) solicit or induce any Networkitects Personnel to provide services to Customer or any third party in any capacity other than as a representative of Networkitects.

6.2 In the event Customer breaches Section 6.1, Customer shall, on demand, pay Networkitects a sum equal to one year's basic salary or the annual fee that was payable by Networkitects to such Networkitects Personnel, plus the recruitment costs incurred by Networkitects in replacing such person.

Section 7. INDEMNIFICATION.

Customer acknowledges that by entering into and performing its obligations under this Agreement, Networkitects does not assume and should not be exposed to the business and operational risks associated with Customer's business. Accordingly, Customer shall defend, indemnify and hold harmless Networkitects and its officers, directors, Networkitects Personnel, successors and permitted assigns from and against all demands, claims, losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing the right to indemnification hereunder arising out of or resulting from Customer's breach of this Agreement or Customer's misuse of the Services and any software or hardware provided or serviced pursuant to this Agreement, including claims based on the infringement of any Intellectual Property Rights.

Section 8. DISCLAIMER OF WARRANTIES.

ALL SERVICES ARE PROVIDED "AS IS," AND NETWORKITECTS HEREBY DISCLAIMS ALL WARRANTIES, EXPRESSED, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT IN ANY WAY LIMITING THE FOREGOING DISCLAIMER, NETWORKITECTS DOES NOT WARRANT THAT CUSTOMER'S USE OF SOFTWARE, HARDWARE OR OTHER EQUIPMENT FURNISHED BY NETWORKITECTS WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE, THAT DEFECTS WILL BE CORRECTED, OR THAT ANY EQUIPMENT TO WHICH ACCESS IS PROVIDED WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. NETWORKITECTS ALSO SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE SERVICES WILL COMPLY WITH THE RULES AND LAWS OF ANY REGULATORY BODY OR ANY LOCAL, STATE OR FEDERAL GOVERNMENTAL ENTITY. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS. CUSTOMER HEREBY ACKNOWLEDGES AND AGREES THAT IT IS SOLELY RESPONSIBLE FOR ITS COMPLIANCE WITH ANY LAWS AND REGULATIONS PROMULGATED BY ANY REGULATORY BODY OR ANY LOCAL, STATE OR FEDERAL GOVERNMENTAL ENTITY TO WHICH CUSTOMER IS SUBJECT.

Section 9. LIMITATION OF LIABILITY.

IN NO EVENT WILL NETWORKITECTS BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE. FURTHERMORE, IN NO EVENT WILL NETWORKITECTS' LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO NETWORKITECTS IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

Section 10. GENERAL.

10.1 Each party shall, upon the reasonable request of the other party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

10.2 The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party will have the authority to contract for or bind the other party in any manner whatsoever.

10.3 Any notice required by or permitted under by this Agreement must be in writing and must be delivered to the addresses set forth on the signature page to this Agreement or to such other address as either party may specify in writing, with notice deemed given: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; (c) by telecopy or facsimile transmission, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt.

10.4 For purposes of this Agreement, the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation," and the word "or" is not exclusive. Unless the context otherwise requires, references in this Agreement to Sections and Statements of Work refer to Sections of and Statements of Work attached to this Agreement. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Statements of Work referred to in this Agreement shall be construed with, and as an integral part of, this Agreement.

10.5 This Agreement, together with all Statements of Work and any other document incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

10.6 Neither party may assign, transfer or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other party. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors or permitted assigns.

10.7 The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

10.8 This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party to this Agreement. No waiver by any party of any of the provisions of this Agreement will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from

this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege under this Agreement preclude any other or further exercise thereof or exercise of any other right, remedy, power or privilege.

10.9 If any provision of this Agreement is held by a court of law to be illegal, invalid, or unenforceable, such provision will be deemed amended to achieve as nearly as possible the same economic effect as the original provision, and the legality, validity, and enforceability of the remaining provisions of this Agreement will not be affected or impaired thereby.

10.10 This Agreement will be governed by and interpreted under the laws of Texas, as such laws are applied to agreements entered into and to be performed entirely within Texas between Texas residents. If a suit, action, or proceeding under or regarding the subject matter of this Agreement (an “Action”) is brought, the party bringing such Action shall bring such Action in the federal and state courts located in Austin, Texas, and, in such event, (a) any counterclaims must be brought in such courts, (b) each party hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue of any such Action in Austin, Texas, and (c) each party further irrevocably waives any claim that Austin, Texas is not a convenient forum for any such Action. Notwithstanding the foregoing, in actions seeking to enforce any order or any judgment of such federal or state courts located in Texas, such personal jurisdiction will be nonexclusive.

10.11 Each party irrevocably and unconditionally waives any right it may have to a trial by jury with respect to any Action arising out of or relating to this Agreement or the Services.

10.12 Customer’s breach of the obligations under Section 5 or Section 6 will result in irreparable and continuing damage to Networkitects for which there will be no adequate remedy at law. If there is such a breach, then Networkitects will be entitled to injunctive relief or a decree for specific performance, and such other and further relief as may be proper (including monetary damages).

10.13 In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any payment obligation), when and to the extent such failure or delay is caused by any circumstances beyond such party’s reasonable control, including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation.

10.14 In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its actual attorneys’ fees and court costs from the non-prevailing party

10.15 Each party represents and warrants to the other party that: (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement; (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and (d) when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

10.16 This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

10.17 This Agreement may be executed in multiple counterparts and by facsimile or digital signature, each of which will be deemed an original and all of which together will constitute one instrument.