



Master Services Agreement

This Master Services Agreement is by and between Rockton Connect LLC, a Colorado limited liability company with offices located at 2801 N 111th St, Erie, CO 80516 ("**Provider**"), and ("**Customer**"). Provider and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

WHEREAS, Provider provides Provider IP (as defined below), including, but not limited to, cloud-based software-as-a-service solutions ("**SaaS Services**"), to customers in various industries; and

WHEREAS, Customer desires to license or access the Provider IP available from Provider from time to time, as mutually agreed by the Parties, subject to the terms and conditions of this MSA.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Any capitalized term used in this MSA, or any Exhibits or documents incorporated by reference, shall have the meaning ascribed to them in those documents or as follows:
 - (a) "Aggregated Statistics" means data and information related to Customer's use of the Provider IP used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Provider IP.
 - (b) "Authorized User" means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Provider IP under the rights granted to Customer pursuant to this MSA; and (ii) for whom access to the Provider IP has been purchased hereunder.
 - (c) "Customer Data" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted,

posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Software or Services.

- (d) "Deliverable" means, other than Provider IP, any custom software code or work product that Provider provides or makes available only to Customer pursuant to an SOW.
- (e) "Documentation" means Provider's, or the owner of the Third-Party Products or Third-Party Materials, then-current privacy policy, terms of use, end-user agreements or requirements, user manuals, handbooks, or installation guides relating to the Provider IP provided in any form or medium (including electronically or via URL) relating to the Software, Services, Deliverables, Third-Party Materials or Third-Party Products and/or describing the functionality, components, features, or requirements thereof, including any aspect of installation, configuration, integration, operation, or use.
- (f) "Intellectual Property" or "IP" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- (g) "MSA" means, collectively, this Master Services Agreement and all SOWs, Exhibits, attachments and other agreements or documents incorporated by reference herein.
- (h) "Provider IP" means, as between Provider and Customer, the Software, Services, Documentation, Third-Party Materials, Third-Party Products, databases related to any of the foregoing, and any and all Intellectual Property provided to, or accessible by, or used by, Customer or any Authorized User in connection with this MSA, except for Customer Data, Customer Confidential Information, and Deliverables paid for by Customer in full. For the avoidance of doubt, Provider IP includes Aggregated Statistics and any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Provider IP.
- (i) "Services" means SaaS Services, professional services, Software customization, implementation, engineering, integration, configuration, hosting, training, and maintenance, database management, and other services described in any SOW attached

hereto as "Exhibit A." If Services include SaaS Services, or other Services that incorporate Third-Party Products (such as, but not limited to, Acumatica, Inc.'s software-as-a service ERP solution), those Services will also include the features, functionality, terms and conditions, described in the applicable third-party's then-current Documentation. If Provider agrees to host individual installations of Software on behalf of Customer, the terms and conditions of "Exhibit B" shall apply to the hosting Services.

- (j) "Software" means the executable, object code version of (a) Provider proprietary software; (b) third-party software, including, but not limited to, Acumatica, Inc.'s proprietary software, and other Third-Party Products that include or incorporate software; and (c) any update, upgrade, release, or other adaptation or modification of either of the foregoing (but not new versions thereof) provided to Customer pursuant to this MSA. Software shall only include source code if open source software ("OSS") is included as a component of Provider IP or if custom Software is provided to Customer as a Deliverable and the applicable Exhibit specifies Customer shall receive source code.
- (k) "Statement of Work" or "SOW" means the description of the scope of Services, Software, Deliverables, and other Provider IP to be provided to, or accessed by, Customer's Authorized Users as mutually agreed by the Parties in writing. All SOWs entered into between the Parties become part of "Exhibit A" and incorporated by reference into this MSA.
- (l) "Third-Party Materials" means materials and information, in any form or medium, that are not proprietary to Provider, including any third-party: (a) documents, data, content, or specifications; (b) hardware, system, local or cloud-based network, or other product, facility, equipment, or device; and (c) accessories, components, parts, or features of any of the foregoing.
- (m) "Third-Party Products" means any third-party services, products or Software provided to Customer in accordance with this MSA, or incorporated into the Software or Services, including, without limitation, Acumatica, Inc.'s ERP solutions or Software or other third-party Software (including OSS).

2. Access and Use.

- (a) Provision of Access. Subject to and conditioned on Customer's payment of Fees and compliance with the terms and conditions of this MSA, Provider hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 13(g)) right to access and use the Provider IP during the MSA Term or applicable Exhibit Term, solely for use by Authorized Users in accordance with the usage terms and conditions stated herein. If Provider IP includes Software, Provider's Software License Agreement attached hereto as Exhibit C, any additional terms provided when the Software is downloaded by or on behalf of Customer, and/or the applicable third-party's Software license agreement (including OSS general licenses) or SaaS Services agreement addressing such Software, shall apply to Customer and all Authorized Users. All use of Provider IP is limited to Customer's internal business purposes. Upon payment of applicable Fees, Provider shall provide to Customer the necessary passwords, keys, and/or network links or connections to allow Customer to access or install the Provider IP as applicable. The total number of Authorized Users will not exceed the number set forth in the applicable Exhibit, and Customer will comply with any Customer Data or data usage and storage limitations, unless otherwise expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the Fees.
- (b) Documentation License. Subject to the terms and conditions contained in this MSA, Provider hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 13(g)) license to use the Documentation during the MSA Term or applicable Exhibit Term solely for Customer's internal business purposes in connection with Customer's use of the Provider IP.
- (c) Use Restrictions. Customer shall not use the Provider IP for any purpose beyond the scope of the use and access granted in this MSA and shall comply with all Documentation and applicable software license(s) for all Software provided to Customer or accessed by Authorized Users. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Provider IP, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Provider IP absent Provider's advance written consent, which consent may be withheld; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to

derive or gain access to any Software component, or other component, of the Provider IP, in whole or in part, or gain access to any Software object code or source code Customer is not entitled to have or use under this MSA; (iv) remove any proprietary notices from the Provider IP; (v) use the Provider IP in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property right or other right of any person or entity, or that violates any applicable law; or (vi) input, upload, transmit, or otherwise provide to or through the Provider IP, any information or materials that contain, transmit, or activate any harmful code.

- (d) Reservation of Rights. Provider reserves all rights not expressly granted to Customer in this MSA. Except for the limited rights and licenses expressly granted under this MSA, nothing in this MSA grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any Intellectual Property rights or other right, title, or interest in or to the Provider IP.
- (e) Suspension. Notwithstanding anything to the contrary in this MSA, Provider may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Provider IP if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Customer's or any Authorized User's use of the Provider IP disrupts or poses a security risk to the Provider IP, or to any other customer or vendor of Provider; (C) Customer, or any Authorized User, is using the Provider IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Provider's provision of the Provider IP to Customer or any Authorized User is prohibited by applicable law; (ii) any vendor of Provider has suspended or terminated Provider's access to or use of any third-party services or Third-Party Products required to enable Customer to access or use the Provider IP; or (iii) in accordance with Section 5(a)(iii) (any such suspension described in subclause (i), (ii), or (iii), a "Service Suspension"). Except for a Service Suspension in accordance with Section 5(a)(iii) (in which case Provider will send Customer a notice of non-payment of Fees prior to Service Suspension), no prior written notice of the Service Suspension is

required and Provider is not required to resume providing access to the Software or Services unless it has received reasonable assurance that the event giving rise to the Service Suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

- (f) Aggregated Statistics. Notwithstanding anything to the contrary in this MSA, Provider may monitor Customer's use of the Provider IP and collect and compile Aggregated Statistics. As between Provider and Customer, all right, title, and interest in Aggregated Statistics, and all Intellectual Property rights therein, belong to and are retained solely by Provider. Customer acknowledges that Provider may compile Aggregated Statistics based on Customer Data input into the Provider IP. Customer agrees that Provider may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law.

3. Customer Responsibilities.

- (a) General. Customer is responsible and liable for all uses of the Provider IP resulting from access or use provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this MSA. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this MSA if taken by Customer will be deemed a breach of this MSA by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this MSA's provisions as applicable to such Authorized User's access or use of the Provider IP, and shall cause Authorized Users to comply with such provisions.
- (b) Customer Systems and Cooperation. Customer shall at all times during the MSA Term: (a) set up, maintain, and operate in good repair and in accordance with the Documentation Customer's information technology infrastructure, including computers, software, databases, electronic systems, and networks, whether operated directly by Customer or through the use of third-party services ("Customer Systems") on or through which the Provider IP are accessed or used; (b) provide Provider with timely access to Customer's premises, Customer Systems and Customer personnel; and (c) provide all

cooperation and assistance as Provider may reasonably request to enable Provider to exercise its rights and perform its obligations under and in connection with this MSA.

(c) **Third-Party Products.** In addition to the terms and conditions of this MSA, any Third-Party Products provided to Customer are subject to the third-party provider's Documentation, terms and conditions, software license agreements, end-user agreements, and other flow-through provisions such as, but not limited to, Acumatica, Inc.'s then-current SaaS agreement and End User License Agreement. If Customer does not agree to abide by the applicable terms for Third-Party Products, then Customer is not permitted to access, install or use such Third-Party Products.

4. **Service Levels and Support.** Unless Customer purchases and pays Fees for a specific level of support Services ("SLA") as reflected in an Exhibit A (SOW), Exhibit B (Hosting Services) or Exhibit C (Software License) entered into by the Parties (each, individually, an "Exhibit" and collectively the "Exhibits"), this MSA does not entitle Customer to any SLA or minimum service levels. If an SLA is agreed in an Exhibit, Customer's sole remedy for Provider's failure to comply with the SLA is the remedy specified in the applicable Exhibit.

5. **Fees, Expenses, and Payment.**

(a) **Fees.** Customer shall pay Provider the fees and costs, including any cancellation or termination fees ("Fees"), for the Provider IP and Deliverables reflected in the Exhibits as specified therein without offset or deduction for any reason.

(b) **Expenses.** Customer shall reimburse Provider for all out-of-pocket expenses incurred by Provider in connection with performing Services or providing Third-Party Products as set forth in the applicable Exhibit ("Expenses"). Provider shall provide reasonable documentation of the Expenses to substantiate the amounts to be reimbursed. Unless a different payment schedule is reflected in the applicable Exhibit, Customer shall pay all Expenses no later than 30 days after the receipt of Provider's documentation of the Expenses.

(c) **Payment.** Customer shall make all payments set forth in the applicable Exhibit(s) in US dollars to the address or account as specified by Provider. Customer shall pay all invoices within the number of days after the date of the invoice specified in the applicable Exhibits, or, if no payment date is specified, no later than 30 days after

the date of the invoice. Any early termination or cancellation Fees are payable immediately upon termination or cancellation. If Customer reasonably disputes any invoice, Customer must notify Provider, in writing, of the reason for the dispute, and provide supporting documentation, within 15 days of receiving the invoice. The Parties agree to negotiate in good faith to resolve any disputed amount. If Customer does not dispute an invoice within the notice period, Customer shall be deemed to accept the invoice. Customer shall pay all undisputed amounts when due. If Customer fails to make any payment when due, without limiting Provider's other rights and remedies: (i) Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse Provider for all costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, other costs, and collection agency fees; and (iii) if such failure continues for 45 days or more, Provider may suspend its Services to Customer, including Customer's and its Authorized Users' use of or access to any portion or all of the Provider IP, until such amounts are paid in full.

- (d) Taxes. All Fees and other amounts payable by Customer under this MSA are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income.
- (e) Auditing Rights and Required Records. Customer agrees to maintain complete and accurate records in accordance with generally accepted accounting principles during the MSA Term and for a period of two years after the termination or expiration of this MSA with respect to matters necessary for accurately determining amounts due hereunder. Provider may, at its own expense, on reasonable prior notice, periodically inspect and audit Customer's records with respect to matters covered by this MSA, provided that if such inspection and audit reveals that Customer has underpaid Provider with respect to any amounts due and payable during the MSA Term, Customer shall promptly pay the amounts necessary to rectify such underpayment,

together with interest in accordance with Section 5(a). Customer shall pay for the costs of the audit if the audit determines that Customer's underpayment equals or exceeds 5% for any quarter.

6. Confidential Information. From time to time during the MSA Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential Intellectual Property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, whether or not marked, designated, or otherwise identified as "confidential" (collectively, "Confidential Information"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees and representatives who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this MSA, including to make required court filings. On the expiration or termination of the MSA, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this MSA for as long as such Confidential Information remains subject to trade secret protection under applicable law.

7. Intellectual Property Ownership; Feedback.

- (a) Provider IP. Customer acknowledges that, as between Customer and Provider, Provider owns all right, title, and interest, including all Intellectual Property rights, in and to the Provider IP and, with respect to Third-Party Products and Third-Party Materials and third-party Documentation, the applicable third-party owns all right, title, and interest, including all Intellectual Property rights, in and to the Third-Party Products, Third-Party Materials and third-party Documentation.
- (b) Customer Data and Deliverables. Provider acknowledges that, as between Provider and Customer, Customer owns all right, title, and interest, including all Intellectual Property rights, in and to the Customer Data, and, Deliverables that have been paid in full. Customer hereby grants to Provider a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data and Deliverables as may be necessary for Provider to meet its obligations under the MSA, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics.
- (c) Feedback. If Customer or any of its employees, representatives or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Provider on Customer's behalf, and on behalf of its employees, representatives, contractors and/or agents, all right, title, and interest in, and Provider is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other Intellectual Property rights contained in the Feedback, for any purpose whatsoever, although Provider is not required to use any Feedback.

8. Limited Warranty and Warranty Disclaimer.

- (a) Provider will perform the Services and provide Deliverables using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this MSA. In addition, Provider warrants that Provider's Services will conform in all material respects to any SLA set forth in an Exhibit if they are accessed and used by Customer in accordance with the requirements of this MSA and the applicable Documentation. Provider does not make any representations or guarantees regarding uptime or availability of the Provider IP unless specifically set-forth in an Exhibit. Provider will re-perform, without additional cost to Customer, any Deliverable that does not comply with the warranty in the first sentence of this Section 8(a) and provide the remedies set forth in the applicable Exhibit if an SLA is not met by Provider due to Provider's fault. These remedies are Customer's sole remedies and Provider's sole liability under the limited warranty set forth in this Section 8(a). THE FOREGOING WARRANTY DOES NOT APPLY, AND PROVIDER STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS. Provider will reasonably assist Customer to submit any applicable warranty claims to the provider(s) of Third-Party Products that do not meet the warranties stated in the Third-Party Product Documentation.
- (b) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), THE SOFTWARE, SERVICES, DELIVERABLES, AND OTHER PROVIDER IP ARE PROVIDED "AS IS" AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, DELIVERABLES, OR ANY RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL OSS COMPONENTS AND OTHER THIRD-PARTY MATERIALS AND THIRD-PARTY PRODUCTS ARE PROVIDED "AS IS."

9. Mutual Representations and Warranties. Each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing, and in good standing;
- (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 MSA;
- (c) the execution of this MSA has been duly authorized by all necessary corporate or organizational action of such party; and
- (d) when executed and delivered by both Parties, this MSA will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

10. Indemnification.

(a) Provider Indemnification.

- (i) Provider shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer to the extent resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that Provider's proprietary Software or Services or Deliverables, or any use thereof by Customer in accordance with this MSA, infringes or misappropriates such third party's United States' Intellectual Property rights. This indemnification obligation does not apply to the extent the Third-Party Claim arises from or relates to: (A) Third-Party Materials, Third-Party Products, or Customer Data; (B) use of the Software, Services or Deliverable in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; (C) modifications made by or on behalf of Customer or negligence, abuse, misapplication, or misuse of the Service, Software or any Deliverables other than by Provider; (D) events or circumstances outside of Provider's commercially reasonable control (including any bugs, defects, or malfunctions of any Third-Party Products, system, or network); or (E) an act, omission or other fact which is the responsibility of Customer or for which Customer is obligated to indemnify Provider.

- (ii) If a Third-Party Claim is made or appears possible, Customer agrees to permit Provider, at Provider's sole discretion, to (A) modify or replace the Software, Services, Deliverable or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If Provider determines that neither alternative is reasonably available, Provider may terminate this MSA, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.
- (b) Customer Indemnification. Customer shall indemnify, defend and hold harmless, Provider and its affiliates (and each of their respective officers, members, managers, employees, and representatives) from and against any Losses resulting from any Third-Party Claims (i) that the Customer Data, or any use of the Customer Data in accordance with this MSA, infringes or misappropriates such third party's Intellectual Property rights; (ii) based on Customer's or any Authorized User's (A) material breach of this MSA, negligence or willful misconduct; (B) use of the Provider IP or Deliverables in a manner not authorized by this MSA; (C) use of the Provider IP or Deliverables in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; (D) modifications to the Provider IP or Deliverables not made by Provider; or (E) Customer's failure to timely implement any release, modification, update or replacement of Software, Services or Deliverables made available by Provider.
- (c) Indemnification Procedure. Each Party shall promptly notify the other Party in writing of any Third-Party Claims for which such Party believes it is entitled to be indemnified pursuant to this Section 10. The Party seeking indemnification (the "**Indemnitee**") shall cooperate with the other Party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Third-Party Claims and shall employ counsel reasonably acceptable to the Indemnitee to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this Section 10(c) will not relieve the Indemnitor of its obligations under this Section 10 except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may

participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor may not settle any Third-Party Claims against the Indemnatee unless Indemnatee consents to such settlement.

(d) Sole Remedy. THIS SECTION 10 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SOFTWARE, SERVICES OR DELIVERABLES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

11. Limitations of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES. IN NO EVENT WILL PROVIDER, OR ANY OF ITS AFFILIATES, EMPLOYEES, CONTRACTORS OR REPRESENTATIVES BE LIABLE UNDER OR IN CONNECTION WITH THIS MSA UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (b) LOSS OF GOODWILL OR REPUTATION; (c) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (d) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS MSA UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE AMOUNT OF FEES PAID TO PROVIDER FOR THE PROVIDER IP OR DELIVERABLE GIVING RISE TO THE LOSSES IN THE 6 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR \$10,000, WHICHEVER IS LESS.

12. Term and Termination.

(a) MSA Term. The initial term of this MSA begins on the Effective Date and, unless terminated earlier pursuant to this MSA's express provisions, will continue in effect until three years from such date. After the initial MSA term, this MSA will automatically renew for additional one-year periods unless either Party gives the other Party

written notice of non-renewal at least 60 days prior to the expiration of the then-current term (each renewal term together with the initial MSA term, the "**MSA Term**").

(b) Term of Exhibits. All Exhibits (including individual SOWs) shall terminate upon the termination, expiration, or cancellation of the MSA for any reason. During the MSA Term, the term of each individual Exhibit shall be the term set forth in such Exhibit unless earlier terminated in accordance with the terms and conditions of this MSA or the applicable Exhibit (each an "**Exhibit Term**").

(c) Termination. In addition to any other express termination right set forth in this MSA or an Exhibit:

- (i) Provider may terminate this MSA, or any individual Exhibit thereto if Provider elects in its discretion not to terminate the entire MSA, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due, and such failure continues more than 10 days after Provider's delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(c) or Section 6;
- (ii) either Party may terminate this MSA, or any individual Exhibit thereto if the terminating Party elects in its discretion not to terminate the entire MSA, effective on written notice to the other Party, if the other Party materially breaches this MSA or an Exhibit, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 45 days after the non-breaching Party provides the breaching Party with written notice of such breach; or
- (iii) either Party may terminate this MSA, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any

court of competent jurisdiction to take charge of or sell any material portion of its property or business.

- (d) Effect of Expiration or Termination. Upon expiration or earlier termination of this MSA or any Exhibit, all rights, licenses and authorizations granted under this MSA or the applicable Exhibit shall immediately terminate and Customer shall immediately discontinue use of the Provider IP, and any Deliverable that has not been paid in full. Without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Provider IP and unpaid Deliverables and certify in writing to the Provider that they have been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund.
- (e) Survival. Any right, obligation, or provision under this MSA or any Exhibit that, by its nature, should survive cancellation, termination, or expiration of this MSA or an Exhibit survive any such cancellation, termination, or expiration.

13. Miscellaneous.

- (a) Entire MSA. This MSA, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this MSA and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. If there is any inconsistency between the body of this MSA, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this MSA, excluding its Exhibits; (ii) second, the Exhibits; and (iii) third, any other documents incorporated by reference
- (b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") must be in writing and addressed to the Parties at the addresses set forth on the first page of this MSA (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section) or via email to the address(es) provided by each Party for that purpose. All Notices must be delivered by personal delivery, nationally

recognized overnight courier (with all fees pre-paid), email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this MSA, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

- (c) Force Majeure. Except for obligations to make payments, in no event shall either Party be liable to the other Party, or be deemed to have breached this MSA, for any failure or delay in performing its obligations under this MSA if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, epidemic, pandemic, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, internet or telephone outages, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.
- (d) Amendment and Modification; Waiver. No amendment to or modification of this MSA or any Exhibit is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this MSA, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this MSA will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- (e) Severability. If any provision of this MSA is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this MSA or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this MSA so as to affect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(f) Dispute Resolution.

- (i) Negotiation/Mediation. The Parties recognize that disputes, controversies, or claims arising out of or in connection with this MSA (each a "Dispute"), may from time to time occur during the MSA Term. It is the Parties' objective to establish procedures to facilitate the resolution of Disputes in an expedient manner by mutual cooperation. To accomplish this objective, subject to the requirements of the MSA, the Parties shall follow this Section 13(f) to resolve any Dispute. The Parties shall attempt in good faith to initially resolve any Dispute by negotiation between the officer(s) or executive(s) with authority to resolve the Dispute appointed, in writing, by each Party (the "Executives"). Within 30 days of receiving a written notice of a Dispute, the Executives shall meet in person, or by teleconference or video conference, at a mutually agreeable time and place, and thereafter as often as they reasonably deem necessary, to attempt in good faith to resolve the Dispute. If the Executives are unable to resolve such Dispute within thirty (30) days after the first meeting of the Executives, the Parties agree to submit the Dispute to mediation before a single mediator employed by the Judicial Arbitrator Group ("JAG") (each, a "**Mediation**"). Each Party agrees to conduct Mediation in good faith and pay their own expenses. The costs charged by JAG, the mediator and to conduct the Mediation shall be borne equally by the Parties. If Mediation does not resolve the Dispute within sixty (60) days of submission of the Dispute to JAG, either Party may request the Dispute be referred to binding arbitration.
- (ii) Governing Law/Jurisdiction/Venue: This MSA is governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Colorado. If the Dispute is not resolved pursuant to Section 13(f)(i), the Parties agree the Dispute will be resolved exclusively by binding arbitration conducted in accordance with Colorado law and the American Arbitration Association Commercial Arbitration Rules in Denver, Colorado, by a single arbitrator employed by JAG. Unless equitable relief is sought under

Section 13(f)(iii), each Party irrevocably submits to the exclusive binding arbitration. Any award, order, or judgment made by an arbitrator is final and binding, and may be enforced in any court of competent jurisdiction. The arbitrator is authorized to award attorney fees and other costs in accordance with this MSA and applicable law, including without limitation, Section 13(f)(iv).

- (iii) Equitable Relief. Notwithstanding any other provision of this Section 13(f), each Party acknowledges and agrees that a breach or threatened breach by a Party of any of its obligations under Section 6 or, in the case of Customer, Section 2(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to engage in Mediation or arbitration, post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.
- (iv) Attorney Fees. If any suit, action, Mediation, arbitration or other proceeding is instituted or commenced by either Party against the other Party arising out of or related to this MSA, the prevailing Party in any final action or settlement shall be entitled to recover its reasonable attorneys' fees and other costs from the non-prevailing Party.
- (g) Non-Solicitation. During the MSA Term and for 1 year after, Customer shall not, and shall not assist any other person or entity to, directly or indirectly recruit or solicit (other than by general advertisement not directed specifically to Provider personnel) for employment or engagement as an independent contractor any Provider personnel employed or engaged by Provider during the MSA Term. If Customer violates this Section, Provider will be entitled to liquidated damages in the amount of \$ 100,000 for each occurrence.
- (h) Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior

written consent of Provider, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This MSA is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

- (i) Export Regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), that prohibit or restrict the export or re-export of the Provider IP or any Customer Data or Deliverables outside the US.
- (j) US Government Rights. Each of the Documentation and the Software components that constitute the Services is a "commercial product" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.
- (k) Counterparts. This MSA may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this MSA as of the Effective Date.

Rockton Connect, LLC

CUSTOMER NAME

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____