

TRACEGAINS, INC. MASTER SERVICES AGREEMENT

This **MASTER SERVICES AGREEMENT** (this “**Agreement**”) is entered into by and between TraceGains, Inc. (“**TraceGains**”), and the company executing a Sales Order (“**Company**”) and governs Company’s access to and use of certain software-based services and related customer success services for its own use and that of Company’s third party users.

1. DEFINITIONS.

Any capitalized terms used in this Agreement shall have the meanings given in this Agreement.

2. HOSTED SERVICE AND CUSTOMER SUCCESS SERVICES.

2.1 **Service Orders & Statements of Work.** The parties will execute service orders (each, a “**Service Order**”) and accompanying statements of work (each, a “**SOW**”). Each additional Service Order and accompanying SOW will be numbered sequentially (e.g., Service Order 1, 2, 3, etc.) and upon execution by both parties shall be deemed an addendum hereto and shall be subject to all of the terms and conditions herein.

2.2 **Hosted Service.** TraceGains shall make available to Company those components of the TraceGains hosted service offering described in a Service Order (the “**Hosted Service**”). TraceGains also shall provide to Company those user guides, documentation and training materials (including any updates or amendments to such guides, documentation and materials) regarding the Hosted Service made generally available by TraceGains to its customers (the “**Documentation**”).

2.3 **Customer Success Services.** TraceGains shall use its commercially reasonable efforts to perform the customer success services described in a SOW (the “**Customer Success Services**”), provided that Company shall assist TraceGains and carry out all tasks reasonably necessary for the implementation of the Hosted Service, including without limitation providing to TraceGains all Company Content as defined in Section 2.11.1 below.

2.4 **Right to Use the Hosted Service.** Subject to Company’s timely payment of all applicable fees, TraceGains hereby grants to Company, during the Term of this Agreement, a non-exclusive, non-transferable (except to the extent otherwise expressly permitted by Section 9.1 (Assignment) below) right and license to access and use the Hosted Service.

2.5 **Third Party User Access.** To the extent any third party supply chain vendor from which Company acquires products and/or services, or any customer to which Company provides products and/or services (each, a “**Third Party User**”) wishes to provide or receive products and services information directly through the Hosted Service, the Third Party User may access the Hosted Service pursuant to the terms and conditions of a click-through agreement between such Third Party User and TraceGains. Company understands and agrees that if any Third Party User declines to agree to the click through agreement that governs the Third Party User’s access to and use of the Hosted Service, TraceGains has no obligation to permit such Third Party User to access or use the Hosted Service, in such cases, TraceGains may offer such Third Party an alternative method to submit information to the Hosted Service.

2.6 **Use Restrictions.** Company shall not: (a) access and/or use the Hosted Service or the Documentation in order to design, create or build a service or product that is competitive with the Hosted Service, or which uses ideas, features or functions that are similar to the Hosted Service; (b) license, sublicense, sell, resell, resyndicate, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Hosted Service or the Documentation; or (c) modify or make derivative works based upon the Hosted Service or the Documentation or any part thereof, or directly or indirectly disassemble, decompile, or otherwise reverse engineer the Hosted Service or any portion thereof; or (d) store data on the Hosted Service that is regulated by the HIPAA Privacy Rules or the PCI Data Security Standards.

2.7 **Usage Parameters.** Rights to access the Hosted Service may be restricted with respect to the number of authorized users or by other quantitative or Hosted Service resource capacity restrictions (collectively, “**Usage Parameters**”) as set out in the Agreement or Service Order.

2.8 **Maintenance.** Company agrees that TraceGains may install software updates, error corrections, and software upgrades in the Hosted Service as TraceGains deems necessary from time to time. TraceGains shall notify Company of such changes, which materially impact the Hosted Service. All software updates, error corrections, and software upgrades shall be considered part of the Hosted Service for all purposes of this Agreement.

2.9 **Suspension of Access to Hosted Service.** TraceGains may suspend Company’s access to the Hosted Service at any time (a) in order to prevent damage to, or degradation of, TraceGains’ network integrity; or (b) if, following notice from TraceGains, Company has failed to pay any undisputed amounts and such amounts are more than thirty days past due. If suspended, TraceGains will promptly restore use of the Hosted Service to the Company after the event giving rise to the suspension has been resolved to TraceGains’ reasonable satisfaction.

2.10 **Proprietary Rights.** The Hosted Service (excluding any Company Content included therein) and any modification thereof, including all intellectual property rights to any of the foregoing, are and shall remain the exclusive property of TraceGains and its licensors. No licenses or rights are granted to Company except for the limited rights expressly granted in Section 2.4 (Right to Use the Hosted Service).

2.11 Licenses to TraceGains.

2.11.1 **Company Content.** During the Term of this Agreement, Company hereby grants to TraceGains a limited right and license, without the right to grant or authorize sublicenses, to use and reproduce, solely for the purpose of facilitating the performance of TraceGains’ obligations under this Agreement, any information or data related to Company (whether supplied by Company or a Third Party User), that is input into the Hosted Service by Company, a Third Party User, or provided by Company or a Third Party User to TraceGains for entry by TraceGains into the Hosted Service, or otherwise provided by Company or a Third Party User in connection with Company’s use of the Hosted Service (the “**Company Content**”). Company is solely responsible for (a) obtaining all rights required to license and use the Company Content as contemplated by this Agreement, and (b) the quality and accuracy of the Company Content. Company agrees to monitor the Company Content that has been included in the Hosted Service (whether inputted by Company, a Third Party User, or TraceGains) for quality and accuracy. If Company so requests within thirty days after the expiration or termination of this Agreement, TraceGains will make available to Company a file of the Company Content. TraceGains may delete all Company Content from its systems and records thirty days after the effective date of termination of this Agreement.

2.11.2 **Aggregated Data.** Company agrees that, subject to TraceGains’ confidentiality obligations in Section 6 (Confidential Information) below, TraceGains may (a) capture data regarding use of the Hosted Service by Company and its Third Party Users, (b) collect metrics and data included in

the Company Content, and (c) aggregate and analyze any metrics and data collected pursuant to subsections (a) and/or (b) of this sentence (collectively, the “**Aggregated Data**”). Company agrees that TraceGains may use, reproduce, distribute and prepare derivative works from the Company Content, solely as incorporated into Aggregated Data, provided that under no circumstances shall TraceGains use the Aggregated Data in a way that identifies Company or its Third Party Users as the source of the data. By way of illustration and not limitation, TraceGains’ use of the Aggregated Data may include examination of the Aggregated Data to develop enhancements to the Hosted Service or the provision of Aggregated Data to its customers for benchmarking purposes.

2.12 Service Level Policy. TraceGains has a standard service level and support policy for the Hosted Service that applies generally to customers of the Hosted Service for no additional charge (the “**Service Level Policy**”), a copy of the version in effect can be accessed at <http://www.tracegains.net> using Customer login credentials. TraceGains retains the right to change the terms and conditions of the Service Level Policy at any time provided that such change(s) do(es) not have a material adverse impact on TraceGains’ customers.

3. FEES, PAYMENT AND TAXES.

3.1 Fees. Fees for use of the Hosted Service and the provision of Customer Success Services are set forth in the applicable Service Order. TraceGains will email invoices to the contact(s) provided in a Service Order. Company may update this information at any time by providing notice to TraceGains via email at accounting@tracegains.com. Unless otherwise set forth in the applicable Service Order, fees are due and payable by Company within thirty days of date of receipt of the invoice for such fees. Undisputed amounts that are past due will be subject to a monthly charge of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less. Upon at least ninety days’ prior notice to Company, TraceGains shall have the right to change fees effective any time after the first anniversary of the Effective Date, but not more than once per year, which right shall include without limitation the right to charge a fee for new features or functions of the Hosted Service, or for features or functions that have previously been offered at no charge.

3.2 Taxes. All amounts payable by Company to TraceGains under this Agreement are exclusive of any tax, levy or similar governmental charge that may be assessed by any jurisdiction, whether based on gross revenue, the delivery, sale or use of the Hosted Service, the provision of Customer Success Services, or otherwise arising out of the execution or performance of this Agreement (including without limitation all sales, use, excise, import or export, value added, governmental permit, license, and customs fees or taxes); provided, however, that Company shall have no liability for any net income, net worth or franchise taxes assessed on TraceGains by the United States or any state thereof.

4. REPRESENTATIONS AND WARRANTIES.

4.1 Mutual Warranties. Each party represents and warrants that it has validly entered into this Agreement and has the full power and authority to do so and to perform its obligations hereunder.

4.2 TraceGains Warranties. TraceGains warrants to Company that the Hosted Service will perform materially in accordance with the Documentation. TraceGains further warrants that the Customer Success Services will be performed in a workmanlike manner in accordance with generally accepted industry standards. If Company reports to TraceGains any breach of the warranties set forth in this Section 4, and provides to TraceGains such detailed information as TraceGains may reasonably require to permit TraceGains to reproduce such non-conformity, then TraceGains, at its expense, shall use commercially reasonable efforts to correct such non-conformity. The foregoing states TraceGains’ sole obligation, and Company’s exclusive remedy, in the event of the breach of any of the warranties set forth in this Section 4.

4.3 Disclaimer of Warranties. THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 4 ARE THE EXCLUSIVE WARRANTIES CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE HOSTED SERVICE AND ANY CUSTOMER SUCCESS SERVICES. EACH PARTY EXPRESSLY DISCLAIMS (TO THE GREATEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW) ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. TRACEGAINS DOES NOT WARRANT THAT (a) COMPANY CONTENT INPUT INTO THE HOSTED SERVICE WILL BE ACCURATE OR FREE OF ERRORS, (b) THE OPERATION OF THE HOSTED SERVICE WILL BE COMPLETELY SECURE, ERROR-FREE OR UNINTERRUPTED, OR (c) ALL ERRORS WILL BE CORRECTED. FURTHER, TRACEGAINS SHALL HAVE NO LIABILITY FOR ANY DELAYS OR INTERRUPTIONS IN COMPANY’S ACCESS TO OR USE OF THE HOSTED SERVICE RESULTING FROM USE OF THE INTERNET AND/OR TELECOMMUNICATIONS CONNECTIONS OR EQUIPMENT.

5. LIMITED LIABILITY.

EXCEPT WITH RESPECT TO COMPANY’S BREACH OF SECTION 2.6 (USE RESTRICTIONS), UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF THIS AGREEMENT, THE HOSTED SERVICE OR THE CUSTOMER SUCCESS SERVICES, INCLUDING WITHOUT LIMITATION ANY COST OF COVER OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES (WHICH THE PARTIES AGREE MAY NOT BE CONSIDERED DIRECT DAMAGES), LOST GOODWILL, LOST PROFITS, LOSS OF DATA OR WORK STOPPAGE. TRACEGAINS’ MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THE HOSTED SERVICE, THE CUSTOMER SUCCESS SERVICES OR THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF THE FEES COMPANY HAS PAID TO TRACEGAINS UNDER THIS AGREEMENT IN THE TWELVE MONTHS PRIOR TO THE EVENT(S) GIVING RISE TO SUCH LIABILITY. TRACEGAINS SHALL HAVE NO LIABILITY OR RESPONSIBILITY WHATSOEVER FOR ANY DATA PROVIDED BY COMPANY OR ANY THIRD PARTY USER, NOR FOR THE ACCURACY OF ANY COMPANY CONTENT. THE LIMITATIONS SET FORTH IN THIS SECTION 5 APPLY REGARDLESS OF THE LEGAL THEORY ON WHICH A CLAIM IS BROUGHT (WHETHER ON THE BASIS OF CONTRACT, NEGLIGENCE, OTHER TORTS, OR STRICT LIABILITY), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGE OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY EXCLUSIVE REMEDY PROVIDED IN THIS AGREEMENT.

6. CONFIDENTIAL INFORMATION.

6.1 Confidential Information. “**Confidential Information**” shall mean any information disclosed by one party to the other, whether orally or in writing, that is designated as confidential or that reasonably should be understood by the receiving party to be confidential, notwithstanding the failure of the disclosing party to designate it as such. Confidential Information may include information that is proprietary to a third party and is disclosed by one party to another pursuant to this Agreement. The Hosted Service, all features and functions thereof and related pricing and product plans shall be the Confidential Information of TraceGains. Company’s product recipes, formulations, and manufacturing methods and Company Content shall be the Confidential Information of Company. The terms and conditions of this Agreement shall be each party’s Confidential Information.

6.2 Restrictions on Use and Disclosure of Confidential Information. Each party agrees to maintain the confidentiality of the other party's Confidential Information, and to not use such Confidential Information except as necessary to perform its obligations or exercise its rights under the Agreement. The receiving party may disclose Confidential Information of the disclosing party to those Third Party Users, consultants, and other agents who need to know such Confidential Information for the purpose of carrying out the activities contemplated by this Agreement and who have agreed in writing to confidentiality terms that are no less restrictive than the requirements of this Section 6. Such party shall be responsible for any improper use or disclosure of the disclosing party's Confidential Information by any such Third Party Users, consultants or other agents. Except to the extent expressly permitted by this Section 6, the receiving party shall not disclose or facilitate the disclosure of Confidential Information of the disclosing party to any third party. The restrictions on use and disclosure set forth in this Section 6 shall continue (a) with respect to any trade secrets, in perpetuity until such time as the trade secret is covered by an exclusion set forth in Section 6.3 (Exclusions) below, and (b) with respect to any other Confidential Information that is not a trade secret, during the Term and for a period of three years after the termination of this Agreement. Each party agrees to return or destroy all copies of Confidential Information of the other party in its possession or control within thirty days of the termination or expiration of this Agreement.

6.3 Exclusions. The receiving party shall have no obligation under this Section 6 with respect to information provided by the disclosing party that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party without use of or reference to the Confidential Information of the disclosing party. Further, either party may disclose Confidential Information: (i) as required by any court or other governmental body, or as otherwise required by law, or (ii) as necessary for the enforcement of this Agreement or its rights hereunder. Further, either party may disclose the terms and conditions of this Agreement and information regarding the course of performance hereunder (1) to legal counsel of such party, (2) in connection with the requirements of an initial public offering or securities filing, (3) in confidence, to accountants, banks, and financing sources and their advisors, or (4) in confidence, in connection with a proposed or actual merger, acquisition or sale of assets.

7. TERM AND TERMINATION.

7.1 Term. This Agreement shall commence upon the date of Company's signature on an initial Service Order ("**Effective Date**") and remain in effect until (a) all executed Service Orders have expired or been terminated or (b) terminated by either party as permitted by this Agreement. Each Service Order shall commence upon the date of Company's signature on the Service Order and remain in effect for an initial term of one year unless otherwise stated in the Service Order. Each Service Order shall automatically renew for consecutive one year periods unless either party provides written notice to the other party of an intention not to renew at least sixty days prior to the end of the original term or subsequent renewal term. The original term together with any applicable renewal term(s) of Service Orders shall be the "**Term**" of this Agreement.

7.2 Termination for Cause. Either party may terminate this Agreement immediately for a breach by the other party of any of its material terms, if the breaching party has failed to cure such breach (if curable) within thirty days of receipt of written notice from the non-breaching party describing the breach.

7.3 Effects of Termination. Upon the expiration or termination of this Agreement for any reason, (a) the rights and licenses granted in Section 2.4 (Right to Use the Hosted Service) will terminate and Company may not access the Hosted Service, and (b) all amounts owed to TraceGains under this Agreement will become immediately due and payable.

7.4 Survival. The following provisions of this Agreement shall survive any expiration or termination of this Agreement: Sections 2.10 (Proprietary Rights), 2.11.1 (Company Content), 2.11.2 (Aggregated Data), 3 (Fees, Payment and Taxes), 4.3 (Disclaimer of Warranties), 5 (Limited Liability), 6 (Confidential Information), 7.3 (Effects of Termination), 7.4 (Survival), 8 (Indemnification), and 9 (General).

8. INDEMNIFICATION.

8.1 Intellectual Property Indemnity. TraceGains agrees to indemnify and defend Company from and against any legal action, demand, suit or proceeding brought against Company by a third party to the extent that it is based on such third party's claim alleging that the Hosted Service as used within the scope of this Agreement infringes a United States copyright or misappropriates a trade secret of such third party. Should the Hosted Service become, or in TraceGains' opinion be likely to become, the subject of any infringement claim, TraceGains may, at its option: (a) procure for Company at TraceGains' expense the right to continue using the Hosted Service, or (b) modify, at TraceGains' expense, the Hosted Service so that it becomes non-infringing but remains functionally equivalent and conforms to TraceGains' warranty set forth in Section 4.2 (TraceGains Warranties), or (c) terminate Company's right to use the Hosted Service, whereupon TraceGains will refund to Company any un-used, pre-paid fees for such Hosted Service. TraceGains shall have no liability for any claim of intellectual property infringement that is based on (i) the use or combination of the Hosted Service with software, hardware or other materials not recommended by TraceGains in writing, provided such infringement would not have arisen but for such use or combination, (ii) use of the Hosted Service in a manner other than as set forth in the Documentation, (iii) specifications or designs provided by Company, or (iv) any unauthorized modification of the Hosted Service.

8.2 Company Indemnity. Company agrees to defend and indemnify TraceGains from and against any legal action, demand, suit or proceeding brought against TraceGains by a third party arising out of or related to the Company Content or Company's use of the Hosted Service and/or the Customer Success Services, except to the extent that such a claim is covered by TraceGains' obligations under Section 8.1 (Intellectual Property Indemnity) above.

8.3 Indemnification Procedures. Each party's indemnification obligations set forth in this Section 8 are subject to the conditions that the indemnified party must: (a) notify the indemnifying party promptly in writing of such claim, (b) permit the indemnifying party to have sole control of the defense, compromise or settlement of such claim, including any appeals, and (c) fully cooperate with the indemnifying party, at the indemnifying party's expense, in the defense or settlement of such claim.

8.4 Disclaimer. THIS SECTION 8 STATES THE ENTIRE LIABILITY OF TRACEGAINS, AND COMPANY'S EXCLUSIVE REMEDY, WITH RESPECT TO THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY THE HOSTED SERVICE OR THE CUSTOMER SUCCESS SERVICES.

9. GENERAL.

9.1 Assignment. Each party may, without the prior written consent of the other party, assign this Agreement to a successor in interest or to an entity that acquires all or substantially all of such party's assets in connection with a merger or acquisition. Except to the extent otherwise expressly provided in the immediately preceding sentence, neither party may assign nor transfer this Agreement or any of its rights or obligations hereunder in whole or in part without the prior written consent of the other party.

9.2 Attorneys' Fees. In the event any proceeding or lawsuit is brought in connection with this Agreement, the prevailing party in such proceeding shall be entitled to receive its costs, expert witness fees and reasonable attorneys' fees.

9.3 Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause that is beyond the reasonable control of such party.

9.4 Governing Law; Jurisdiction and Venue. This Agreement shall be governed by and construed in all respects in accordance with the laws of the State of Delaware, without reference to conflict of laws principles. Each party hereby consents to the exclusive venue and jurisdiction of the courts of Wilmington, Delaware.

9.5 No Agency. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

9.6 Non-Solicitation. Neither party will knowingly, either directly or indirectly, solicit, hire or recruit the personnel of the other party during the Term and for a period of one year thereafter. The foregoing notwithstanding, a party will not be deemed to have breached this Section 9.6 by (a) hiring personnel responding to generally placed help-wanted advertisements or job postings or (b) hiring personnel of the other party that have been terminated or notified of pending termination by the other party.

9.7 Notices. Notices to TraceGains will be sent via email to: legal@tracegains.com. Notices to Company will be sent to the contacts identified on a Service Order or to other such address as designated by one party to the other by delivering notice subject to this Section 9.7. Notice provided subject to this Section 9.7 will be deemed delivered upon (a) personal delivery, (b) the second business day after sending by certified or registered mail, return receipt requested, or (c) the first business day after sending by email.

9.8 Publicity. Neither party shall use the other party's name or the existence of this Agreement in any press releases without the prior written consent of the other party. Company consents to TraceGains' identification of Company by name and logo as a user of the Hosted Service on its website during the term of this Agreement subject to Company's right to revoke such consent at any time.

9.9 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable or invalid, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the Agreement shall remain in full force and effect.

9.10 Waiver; Amendment. Any waiver or failure to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Except to the extent otherwise expressly provided in this Agreement, this Agreement may only be amended in writing signed by both parties hereto.

9.11 Entire Agreement; Precedence. This Agreement, together with any Service Orders and SOWs states the entire agreement of the parties regarding the subject matter of this Agreement, and supersedes all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. If an ambiguity or conflict among the following documents, the order of precedence shall be: (a) the terms and conditions of a Service Order; (b) the terms and conditions of a SOW; and (c) the terms and conditions of this Agreement. Any preprinted terms on any purchase order are hereby expressly rejected by TraceGains and shall be of no force or effect.