

Master Services Agreement

This Master Services Agreement (the “MSA”) is a legal agreement entered into by and between MetaData Engineering, LLC d/b/a SimpliMeta (“SimpliMeta Engineering” or “SimpliMeta”) and the Customer identified on an SOW (“Customer”) and governs any statements of work, order forms, quotes, or other ordering documents executed by Customer (each, an “SOW”) that reference this MSA. This MSA is effective on the date Customer executes the SOW or submits a matching purchase order to SimpliMeta, as applicable (the “Effective Date”). This MSA permits Customer to purchase Services (as defined below) identified in the SOW and sets forth the terms and conditions under which those Services will be delivered. The MSA consists of the terms and conditions set forth below, and in any attachments or exhibits identified herein and any SOWs that reference this agreement.

BY (1) EXECUTING, WHETHER MANUALLY OR ELECTRONICALLY, AN SOW, (2) DELIVERING A PURCHASE ORDER OR OTHER CONFIRMATION TO SIMPLIMETA DOCUMENTING ACCEPTANCE OF AN SOW, (3) OPERATING, DOWNLOADING, INSTALLING, REGISTERING OR OTHERWISE USING A SERVICE, OR (4) CLICKING AN "I ACCEPT" OR "CONTINUE" BUTTON ASSOCIATED WITH THIS MSA, CUSTOMER (OR ITS AUTHORIZED EMPLOYEE OR AGENT, IF APPLICABLE) EXPRESSLY AND EXPLICITLY ACKNOWLEDGES AND AGREES THAT THIS IS A BINDING AGREEMENT AND CUSTOMER THEREBY AGREES TO THE TERMS OF THIS MSA AND ACCEPTS THE OFFER TO SUBSCRIBE TO THE SERVICES PURSUANT TO THE TERMS HEREIN. IF YOU ARE AN EMPLOYEE OR OTHER REPRESENTATIVE ACCEPTING THIS MSA ON BEHALF OF CUSTOMER, YOU HEREBY REPRESENT AND WARRANT TO SIMPLIMETA THAT YOU ARE (A) AUTHORIZED TO ENTER INTO THIS MSA ON BEHALF OF CUSTOMER; AND (B) OVER 18 YEARS OLD. IF YOU DO NOT ACCEPT ALL THE TERMS AND CONDITIONS IN THIS MSA OR ARE NOT AUTHORIZED TO ENTER INTO THIS AGREEMENT ON CUSTOMER’S BEHALF, THEN DO NOT ACCEPT THE SOW, ISSUE A PURCHASE ORDER OR OTHER CONFIRMATION, OR OTHERWISE USE THE SERVICES..

1. SERVICES AND DELIVERABLES.

1.1. Performance

SimpliMeta agrees to provide (i) the services expressly set forth from time to time in a Statement of Work (“SOW”) executed by both parties and such other services as SimpliMeta may agree to provide from time to time (each individually a “Service” and collectively “Services”), and (ii) the tangible deliverables expressly identified as a “Deliverable” from time to time in a SOW. The terms “Service(s)” and “Deliverable(s)” do not include Products (defined at Section 3.1 below) or the products or services of or rendered by third parties, even if provided or billed to Client by SimpliMeta. In the event of a conflict between a SOW and this Agreement, the Agreement will control unless the SOW specifically states that it is intended to prevail over the applicable provision in this Agreement.

1.2. Change Orders

No additions, deletions, or modifications to the Parties’ obligations as set forth in a SOW (each, a “Change”) will be binding upon either Party unless set forth in a writing signed by both Parties (a “**Change Order**”). Client must request any such Changes in writing, and SimpliMeta’s Project Manager will review and analyze such request and inform Client in writing if such a Change is accepted and if so, if it would result in an extension of the schedule for Services or additional cost to Client, giving details thereof. An executed Change Order will become part of the corresponding SOW, and in the event of any conflict between a SOW and any Change Order, or in the event of conflict between Change Orders to a given SOW, the later Change Order will control.

1.3. Project Managers

Each Party will designate an employee who will have the primary responsibility for communicating with and providing necessary assistance to the other Party (each such employee is a “**Project Manager**”). All communications between the Parties will be made or coordinated by such Project Manager. Each Party will notify the other in writing of any replacement of its Project Manager. Client agrees that its Project Manager will be responsible for approving plans and making decisions on behalf of Client and will have authority to act on behalf of and bind Client. For avoidance of doubt, those employees listed by Customer in a SOW shall have authority to request Services under that SOW.

1.4. Subcontractors

The Parties acknowledge that SimpliMeta may delegate performance of some or all of its obligations under this Agreement to subcontractors; However, SimpliMeta will remain fully responsible and liable for the performance of such obligations.

2. ACCEPTANCE

Client will have five (5) business days from the date of delivery of Services or Deliverables (as the case may be) to test and evaluate the Services or Deliverables for conformity with the requirements therefor set forth in the applicable SOW (the “**Specifications**”). Client will accept each Service or Deliverable (as the case may be) if it materially conforms to the Specifications. If the Services or Deliverables (as the case may be) do not materially conform to the Specifications, then Client will provide a written statement of nonconformity to SimpliMeta, identifying in detail the basis for the nonconformity, within such five (5) business day period. SimpliMeta will use reasonable commercial efforts to correct the identified nonconformity and re-deliver such Services or Deliverables (as the case may be) within a period of fifteen (15) business days (or such other period of time as mutually agreed upon in writing) under the same acceptance testing procedure, whereupon the testing and notice of acceptance or rejection procedure described in this Section will be repeated up to three (3) times as necessary, using the same time frames as described above, measured from the most recent delivery or re-delivery of Services or Deliverables.

Client will be deemed to have accepted a Service or Deliverable (i) if Client gives written notice of acceptance of the Service or Deliverable, (ii) if Client fails to provide a written statement of nonconformity to SimpliMeta within five (5) business days after the most recent delivery or re-delivery of the Service or Deliverable, or (iii) if Client utilizes the Service or Deliverable in a live commercial or production environment or makes any use thereof other than as strictly necessary for testing under this Section.

SimpliMeta will not be deemed to be in breach of this Agreement with respect to given Services or Deliverables (as the case may be) which fail to conform to the Specifications unless and until SimpliMeta fails to deliver such Services or Deliverables (as the case may be) which materially conform to the Specifications after three (3) attempts to correct the same nonconformity. In the event SimpliMeta fails to deliver Services or Deliverables (as the case may be) which materially conform to the Specifications after three (3) attempts to correct the same nonconformity, Client’s sole and exclusive remedy with respect to the nonconforming Services or Deliverables (as the case may be) will be to terminate the applicable SOW and receive a refund of Fees directly attributable to the nonconforming Services or Deliverables.

3. PRODUCTS.

3.1. Products

“**Product(s)**” means, individually and collectively, hardware or services, or licenses in software, marketed, distributed, provided, sold or licensed by third parties that SimpliMeta agrees to procure for or resale to Client under this Agreement. From time to time, SimpliMeta may agree to procure for or sell to Client Products to the extent set forth in a SOW or in an order form or other written document (“**Order Form**”) agreed to by the Parties. In other cases, a SOW or Order Form may provide that SimpliMeta will bill and collect for (or perform similar intermediary functions with respect to) Products to be provided directly by a Third Party Vendor (defined below). Each Order Form will become part of this Agreement and, in the event of a conflict between such Order Form and the rest of this Agreement, the Agreement will control unless the Order Form specifically states that it is intended to prevail over the applicable terms of this Agreement.

3.2. Title; Risk of Loss

Title to and ownership of each hardware Product sold by SimpliMeta (but not services or Products licensed) passes to Client from SimpliMeta or the third party manufacturer, vendor or proprietor thereof (“**Third Party Vendor**”) (as applicable) when the applicable Fees are paid in full. Risk of loss to the Products passes to Client upon delivery by SimpliMeta to the transportation/freight carrier (or upon delivery to Client, where delivered by SimpliMeta using SimpliMeta-operated transport). Client will insure the Products for their full replacement value until the applicable Fees are paid in full. Without limiting the foregoing, Client is responsible for procuring all insurance on Products while in shipment/transit (and if SimpliMeta obtains such insurance on behalf of Client at Client’s request, Client will reimburse SimpliMeta for all costs thereof). Client grants SimpliMeta a security interest in and to the Products sold hereunder as security for performance of Client’s payment obligations. Client will execute a UCC financing statement at SimpliMeta’s request, along with any other documents deemed necessary by SimpliMeta to perfect such security interest, and SimpliMeta may file the Agreement (together with any attachments thereto and any

other documents) to perfect such interest. Upon any default or breach by Client of its payment obligations, SimpliMeta will have the right to repossess the Products as well as all rights and remedies of a secured party under the Uniform Commercial Code.

3.3. Licenses in Products; “Billed” Products

To the extent that the Products consist of subject matter that is licensed to Client (including software or firmware embodied in Products) or SimpliMeta is merely billing and collecting for (or performing similar intermediary functions with respect to) Products to be provided directly by a Third Party Vendor, Client agrees that, notwithstanding Section 3.2 all licenses and rights of Client with respect to such Products, and any warranties, support and indemnifications with respect thereto, if any, will be governed by the terms and conditions of the separate license or other terms for such Products between Client and the Third Party Vendor. Such terms will exist solely and directly between Client and the Third Party Vendor, and Client will be solely responsible for compliance with and maintenance of, all applicable licenses and other rights, obligations, terms and conditions with respect thereto. In the event that any of the Products purchased or licensed by Client are subject to shrink-wrap, on screen or similar license or other terms that must be accepted during any installation or configuration Service performed for Client by SimpliMeta, Client authorizes SimpliMeta to accept the terms of such agreements on its behalf. SimpliMeta will not be deemed a party to, or have any liability with respect to, such terms, and such terms are not part of this Agreement.

3.4. Product Warranties

To the extent the Product(s) come subject to one or more valid warranties provided by the Third Party Vendor that run to the benefit of the end purchaser or user, SimpliMeta will provide all such warranties with such Products. If such warranties run to the benefit of SimpliMeta, SimpliMeta will assign, and does assign, such warranties to Client, to the extent permitted by such Third Party Vendor or by applicable law. SimpliMeta will have no liability to Client with respect to or under such warranties or for any support or indemnification obligations with respect to Products. As between SimpliMeta and Client, all Products are deemed accepted upon delivery thereof, and Client waives the right to revoke acceptance, but this does not waive any rights Client may have with respect to the Third Party Vendor. THE PRODUCTS ARE NOT DESIGNED OR MANUFACTURED BY SIMPLIMETA AND SIMPLIMETA ITSELF MAKES NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO PRODUCTS.

3.5. Returns

To the extent SimpliMeta elects to accept any return of Products, SimpliMeta may charge, and Client shall pay, a restocking fee in the amount of twenty percent (20%) of the total Fees for the returned Product. Title to any returned Products shall pass to SimpliMeta, free and clear of all security interests, liens and encumbrances, upon return thereof to SimpliMeta. All returns are subject to compliance with SimpliMeta's then-current standard RMA procedures and policies, and Client shall remain liable for one hundred percent (100%) of the total Fees for any returned Products that are not received by SimpliMeta in the same condition as delivered to Client.

4. COMPENSATION AND PAYMENT TERMS.

4.1. Fees

Client agrees to pay the various fees (“Fees”) set forth in an applicable SOW. SimpliMeta's Fees for Services or Products specified in a given SOW or Order Form will be set forth in the SOW or Order Form, and Fees for any Services not specified in the SOW will be billed at, and Client shall pay for such Services at, SimpliMeta's then-current time-and-materials rates (except where other rates have been agreed to by Client and SimpliMeta).

4.2. Expenses

In addition to payment of the Fees, Client will reimburse SimpliMeta for all reasonable out-of-pocket expenses incurred in its performance hereunder and for any expenses incurred at the written request of Client (collectively “Expenses”). Expenses will include, without limitation, travel, shipping, meals, and lodging.

4.3. Payment, Invoices

All amounts due hereunder will be paid in U.S. Dollars. SimpliMeta will invoice Client for Fees and Expenses at the intervals indicated herein or in a SOW. Unless otherwise provided in the applicable SOW, billing for fixed price engagements will be invoiced monthly in advance, and billing for hourly or other variable rate engagements shall be invoiced monthly in arrears. Payment will be due within thirty (30) days of the date of the invoice, and invoices which remain unpaid thirty (30) days after receipt by Client will accrue interest at a rate which is the lesser of one and a half percent (1.5%) per month or the maximum interest rate otherwise allowed by law until paid in full. Expenses will be included on an invoice only to the extent that the actual amount of Expenses is known to SimpliMeta at the time the invoice is

issued, and Expenses for which an actual amount is not known to SimpliMeta at the time an invoice is issued may be included on subsequent invoices. Unless otherwise agreed in writing by the Parties, the failure of SimpliMeta to include earned or incurred Fees or Expenses on a given invoice will not relieve Client of its obligation to pay such Fees or Expenses. Unless expressly set forth herein or in the applicable SOW, all Fees are non-cancelable and non-refundable. In the event of litigation or collection activity arising out of Client's non-payment, SimpliMeta will be entitled to reasonable costs and expenses of collection, including attorneys' fees. SimpliMeta reserves the right to suspend performance if Client is in arrears in payment.

4.4. Taxes

The Fees and all other amounts due to SimpliMeta are net amounts exclusive of all sales, use, excise, value-added or similar taxes, assessments, or duties (or other similar charges) (collectively, "Taxes") imposed by any government agency with respect to this Agreement (excluding taxes imposed on SimpliMeta's net income.) Client is responsible for and shall promptly pay all Taxes.

4.5. Disputed Amounts

If Client disputes any invoiced amount, then Client shall pay the undisputed portion by the original due date and notify SimpliMeta in detail in writing as to the grounds for the dispute. The Parties will work together in good faith to resolve the dispute and, in the event the Parties have not resolved a given dispute within thirty (30) calendar days (or such longer period as may be agreed upon), then the Parties may submit the dispute to the dispute resolution procedures described in Section 12.1

5. TERM.

5.1. Term; Termination

The term of this Agreement will begin upon the Effective Date and will continue until terminated by either Party upon ten (10) days' prior written notice to the other Party if there are no outstanding obligations of either Party under a then-current SOW or Order Form (provided, however, that a Party may terminate this Agreement pursuant to this subsection (i) only if such Party is not then in breach of any provision of this Agreement), or terminated in accordance with this Section. Either Party may terminate this Agreement or a given SOW or Order Form at any time upon giving written notice as follows: (a) in the event that the other Party materially breaches this Agreement or such SOW or Order Form and fails to correct the breach (1) with respect to breaches of obligations of confidentiality or of a license granted hereunder or failure to pay applicable Fees, within ten (10) calendar days after written notice specifying the breach, and (2) with respect to all other material breaches of this Agreement or such SOW or Order Form, within thirty (30) days after written notice specifying the breach; or (b) in the event that the other Party makes an assignment for the benefit of creditors, or commences, or has commenced against it any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws or laws of debtor's moratorium.

5.2. Effect of Termination

Within five (5) business days after the effective date of termination or expiration of this Agreement for any reason whatsoever, Client will pay SimpliMeta all Fees and Expenses earned or incurred by SimpliMeta under any SOW or Order Form through the date of termination (to the extent not previously paid by Client), specifically including amounts for work in progress at the time of termination or expiration, calculated at SimpliMeta's then-current time and materials rates (except where other rates have been agreed to by Client and SimpliMeta). Unless the Parties agree otherwise in writing, termination or expiration of this Agreement for any reason whatsoever will not terminate any Statements of Work or Order Forms. Additionally, all rights and licenses granted by SimpliMeta hereunder (unless such licenses have been stated in this Agreement to be perpetual) will immediately cease and be terminated and all property (including Confidential Information) of each Party that is in the possession of the other Party will be returned to its owner. Notwithstanding the foregoing, in the event of termination of this Agreement or any portion thereof (including any license granted hereunder) by SimpliMeta due to breaches of obligations of confidentiality or of a license granted hereunder for failure to pay applicable Fees and Expenses, all rights and licenses granted by SimpliMeta hereunder will immediately cease and be terminated, even if such licenses have been stated in this Agreement to be perpetual. Termination of this Agreement will not relieve Client of its obligation to pay all Fees and Expenses that are owed by Client under this Agreement.

6. CLIENT OBLIGATIONS.

6.1. Cooperation; Information

In addition to all other obligations of Client hereunder, Client agrees that it will cooperate with and assist SimpliMeta to the extent necessary in the provision of the Services, Deliverables and Products and will provide any resources of Client reasonably necessary for SimpliMeta's performance hereunder. Client

expressly acknowledges and agrees that proper provision of the Services, Deliverables and Products is dependent upon the provision to SimpliMeta by Client of timely and accurate information regarding Client's needs and expectations, and all operational, business or other data which is relevant to the provision of the Services, Deliverables and Products, and Client agrees to provide SimpliMeta with all such information and data on a timely and accurate basis. The Parties expressly agree that SimpliMeta's obligations and warranties hereunder are expressly conditioned on Client's performance under this Section 6. Client will create and maintain complete, up-to-date backups of Client's data and program files. SimpliMeta will not be responsible for any loss or corruption of Client's data, "downtime", loss or corruption of other software program files associated with the provision of Services, whether arising in contract, tort, negligence, strict liability or otherwise, except for the willful destruction of Client's data or program files by SimpliMeta.

6.2. Client-Supplied Materials

Client expressly agrees and acknowledges that in the course of performance, SimpliMeta may access, utilize and, upon Client request, copy, adapt, modify and prepare derivative works of, the Client-Supplied Materials (as defined herein) and the Deliverables may consist, in whole or in part, of derivative works of Client-Supplied Materials, and Client hereby grants to SimpliMeta and its agents and subcontractors an irrevocable license, for the term of this Agreement, to do any and all of the foregoing. Client hereby represents, warrants and covenants to SimpliMeta that (a) Client has secured or will secure from all owners or proprietors of any and all Client-Supplied Materials, prior to delivering or making available such Client-Supplied Materials to SimpliMeta, all rights in, and consents of third parties with respect to, such Client-Supplied Materials reasonably necessary for SimpliMeta and its agents, and subcontractors to lawfully perform the Services and create the Deliverables and to do all acts related thereto described in this Agreement or in any SOW (including exercising any licenses granted hereunder); and (b) Client will maintain all rights and consents set forth at subsection (a) throughout the term of this Agreement. For purposes of this Agreement, "**Client-Supplied Materials**" means any materials, data or information which Client, from time to time during the term of this Agreement, delivers or makes available to SimpliMeta and that are utilized in connection with, or incorporated into, the Services and/or Deliverables, including without limitation, confidential information, trade secrets, copyrights, trademarks, patentable subject matter or intellectual property of Client or of third parties. Client will defend, indemnify and hold harmless SimpliMeta and its successors or assigns, affiliates, subsidiaries, officers, directors, employees, agents, and independent contractors against any and all claims, liability, loss, damage, or harm (including without limitation reasonable legal and accounting fees) suffered by any of them arising from or in connection with a claim by any third party that the Client-Supplied Materials or the use thereof in accordance with this Agreement infringes any right of such third party.

7. WARRANTIES.

SimpliMeta warrants that the Services and Deliverables will be provided in a workmanlike and professional manner in material conformity with applicable Specifications. Upon breach of the warranty contained in this Section, (i) Client's sole and exclusive remedy will be to require SimpliMeta to exercise its best efforts to repair or replace the nonconforming portion of the Services or Deliverables, and (ii) SimpliMeta's obligation will be limited to exercising its best efforts to repair or replace the nonconforming portion of the Services and/or Deliverables. This warranty will not apply with respect to any alleged failure or defect in the Services or Deliverables that is not reported to SimpliMeta in writing within thirty (30) days after the performance of the applicable Services or delivery of the applicable Deliverable (as the case may be.) Anything in this Agreement, any Order Form or any SOW to the contrary notwithstanding, SimpliMeta will not be deemed in breach of any representation or warranty under this Agreement where the alleged breach arises from or in connection with (a) Client-Supplied Materials, (b) Client's breach of this Agreement, (c) any use by Client of any Services or Deliverables other than in accordance with this Agreement, the Specifications and all applicable laws, rules and regulations, (d) any use by Client of any Services or Deliverables in combination with any other product or service not supplied or provided by SimpliMeta, or (e) any changes or modifications to any Services or Deliverables by any person or entity other than by SimpliMeta. The warranties in this Section are in lieu of all other representations and warranties by SimpliMeta, express or implied, contractual or statutory, including but not limited to the implied warranties of merchantability, fitness for a particular purpose and noninfringement, with respect to the Services or any Deliverable or Product, and all such representations and warranties are hereby expressly excluded and disclaimed.

8. INDEMNIFICATION.

Subject to all terms and conditions of this Section, SimpliMeta will indemnify and hold harmless Client against claims asserted against Client by a third party that a Deliverable or Service infringes a valid U.S. patent, copyright, trademark or trade secret. SimpliMeta's obligations set forth in this Section only apply if

and to the extent: Client provides SimpliMeta notice of such claim upon which Client intends to base a claim of indemnification hereunder within thirty (30) days of Client becoming aware of the claim; SimpliMeta is given sole control of the defense and all related settlement negotiations relating to such claim or action; Client provides reasonable assistance and cooperation to enable SimpliMeta to defend the action or claim hereunder; and the claim does not arise out of or in connection with (a) Client-Supplied Materials, (b) Client's breach of this Agreement, (c) any use by Client of any Services or Deliverables other than in accordance with this Agreement, the Specifications and applicable laws, rules and regulations, (d) any use by Client of any Services or Deliverables in combination with any other product or service not supplied or provided by SimpliMeta or required by SimpliMeta in writing, (e) any changes or modifications to any Services or Deliverables by any person or entity other than by SimpliMeta, or (f) continued use by Client after SimpliMeta has made available a non-infringing replacement for such Service or Deliverable. If SimpliMeta determines that a Deliverable is likely to, or if a Deliverable is determined in a final, non-appealable judgment by a court of competent jurisdiction to, infringe a U.S. patent, copyright, trademark or trade secret, SimpliMeta will have the option, in SimpliMeta's sole discretion, to elect one or more of the following: (1) replace such Service or Deliverable or secure the rights necessary for Client to continue using such Service or Deliverable without infringement; (2) modify such Service or Deliverable to make it non-infringing; or (3) remove such Service or Deliverable, terminate the applicable licenses, and, if SimpliMeta is or would be obligated to indemnify Client against such infringement under this Section, refund an equitable portion of the fees paid to SimpliMeta by Client for the Service or Deliverable. This Section states SimpliMeta's entire liability and Client's exclusive remedy for any claim of infringement with respect to the Services or Deliverables.

9. LIABILITY.

Any other provision of this Agreement to the contrary notwithstanding, the liability of SimpliMeta for any losses or damage arising out of or in connection with this Agreement from any cause whatsoever, including without limitation any cause of action sounding in contract, tort or strict liability, will be limited to actual, direct damages incurred but in no event will exceed the total Fees and Expenses actually received by SimpliMeta, for the Products, Services or Deliverables that gave rise to the liability during the twelve (12) month period preceding the date on which the most recent act or omission giving rise to such liability occurred. Under no circumstances will SimpliMeta be liable for lost profits or other consequential damages, cover damages, special damages, general damages, incidental damages, indirect damages, or exemplary or punitive damages, even if SimpliMeta was advised of the possibility of same, arising out of or in connection with this Agreement from any cause whatsoever. Anything in this Agreement to the contrary notwithstanding, the remedies of Client are limited to those expressly set forth in this Agreement. The limitations and exclusions in this Agreement will continue to apply even in the event a warranty or remedy fails of its essential purpose. No action arising out of this Agreement, regardless of form, may be brought by Client against SimpliMeta more than one (1) year after commission of the act or omission which gave rise to the cause of action.

10. OWNERSHIP; LICENSES.

10.1. SimpliMeta Engineering Pre Existing Intellectual Property; License

All rights, title, and interest in the SimpliMeta Engineering Pre Existing Intellectual Property will be and remain the exclusive property of SimpliMeta Engineering. "**SimpliMeta Engineering Pre Existing Intellectual Property**" means, individually and collectively, SimpliMeta Engineering's software, systems, business methods, notes, reference materials, sketches, drawings, Confidential Information, memoranda, documentation, software and records in any form or media that are owned or developed by SimpliMeta Engineering or its licensors prior to, or separately and apart from, this Agreement, including but not limited to all worldwide copyrights, trade secrets, trademark, confidential, and proprietary rights in, and all copies of, any of the foregoing. Client gains no right, license, title, or permission with respect to the SimpliMeta Engineering Pre Existing Intellectual Property by virtue of this Agreement except as expressly set forth in this Agreement. If SimpliMeta Engineering delivers any SimpliMeta Engineering Pre Existing Intellectual Property to Client in the course of performance under a SOW, then, subject to all terms and conditions of this Agreement (including without limitation the terms of Section 11 and except as provided at Section 10.3 below), SimpliMeta Engineering hereby will be deemed to grant to Client a non-exclusive, personal, non transferable, non-assignable, non-sublicensable, license to permit Client to use the SimpliMeta Engineering Pre Existing Intellectual Property only in connection with the Services and only during the term of such SOW.

10.2. Ownership of Work

Except as expressly provided otherwise in Section 10.3 or in a SOW, as between the Parties, exclusive title to and ownership of any work product generated, developed or delivered by SimpliMeta Engineering in the course of its performance hereunder (including without limitation notes, reference

materials, sketches, drawings, memoranda, documentation, inventions, know-how and business processes, software and records in any form or media and all copies of any of the foregoing – but excluding any Client Confidential Information) (individually and collectively “**Work**”) will vest in SimpliMeta Engineering. To the extent that any right or title to any part of the Work does not vest in SimpliMeta Engineering in accordance with the foregoing, Client hereby assigns to SimpliMeta Engineering or its designee, to the fullest extent permitted by law, all title to and ownership of the Work (including without limitation ownership of all copyrights in all copyrightable subject matter therein).

10.3. Ownership of Deliverables; License

Upon Client’s acceptance and payment in full of all Fees and Expenses under the applicable SOW, and subject to all terms and conditions of this Agreement, Client will own the Deliverables provided under such SOW as “works made for hire” under applicable law and, to the extent that any right or title to any part of such Deliverables does not vest in Client in accordance with the foregoing, SimpliMeta Engineering hereby assigns to Client or its designee, to the fullest extent permitted by law, all title to and ownership of such Deliverables (including without limitation ownership of all copyrights in all copyrightable subject matter therein). Notwithstanding the foregoing, nothing in this Section will be deemed to grant Client ownership of any SimpliMeta Engineering Pre Existing Intellectual Property or other Work that is not a Deliverable hereunder, even if and as incorporated into a Deliverable; however, to the extent that the Deliverable incorporates any SimpliMeta Engineering Pre Existing Intellectual Property or any other Work that is not a Deliverable hereunder, then, upon Client acquiring ownership of the applicable Deliverable as provided above, SimpliMeta Engineering hereby will also be deemed to grant to Client a non-exclusive, personal, non transferable, non assignable, non-sublicensable, perpetual, royalty free license to use the applicable SimpliMeta Engineering Preexisting Intellectual Property or Work incorporated in such Deliverable, but only as part of, and in conjunction with, the applicable Deliverable for Client’s internal uses only. All rights not specifically granted to Client hereunder are reserved to SimpliMeta Engineering and Client agrees that it will not make any use of any SimpliMeta Engineering Pre Existing Intellectual Property or Work in any manner or for any purpose whatsoever except as expressly permitted by the terms and conditions of this Agreement. Any license granted to Client under this Agreement or under any SOW is terminable upon Client’s breach of the terms of such license or failure to pay all amounts due hereunder.

11. CONFIDENTIAL INFORMATION.

11.1. Restrictions on Use and Disclosure

SimpliMeta and Client acknowledge that, in the course of performance under this Agreement, each may receive, obtain knowledge of, or become privy to the Confidential Information (as hereinafter defined) of the other Party. Neither Party will disclose to any third party (other than its legal and financial advisors or, in the case of SimpliMeta as Receiving Party, to SimpliMeta’s agents and subcontractors, or in connection with enforcement hereof) nor use for any purpose, except to the extent required or permitted for such Party’s performance under or enforcement of this Agreement, any Confidential Information of the other Party. The Receiving Party will use commercially reasonable efforts to cause all third parties to whom such Party discloses the other Party’s Confidential Information to protect such Confidential Information from disclosure and use to the same extent that the Receiving Party is obligated to protect such Confidential Information hereunder. For purposes of this Section 11, “**Disclosing Party**” means the Party whose Confidential Information has been disclosed to the other Party, and “**Receiving Party**” means the Party who receives, obtains knowledge of, or becomes privy to Confidential Information of the Disclosing Party.

11.2. Confidential Information Defined; Exclusions

For purposes of this Agreement, “Confidential Information” means data and information (regardless of form, whether tangible, intangible, or merely recollected): (i) relating to the business of Disclosing Party, regardless of whether the data or information constitutes a “trade secret” as that term is defined under applicable law; (ii) disclosed to Receiving Party or of which Receiving Party became aware of as a consequence of Receiving Party’s relationship with Disclosing Party; (iii) having value to Disclosing Party; and (iv) not generally known to competitors of Disclosing Party; provided, however, that such term will not mean data or information: (A) which has been voluntarily disclosed to the public by Disclosing Party; (B) which has been independently developed by Receiving Party or others; or (C) that has otherwise entered the public domain or become publicly known through lawful means. Confidential Information may include, but is not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): trade secrets, discoveries, ideas, concepts, software in various stages of development, designs, drawings, specifications, techniques, models, data, source code, object code, documentation, diagrams, flow charts, research, development, processes, procedures, know-how, marketing techniques and materials, marketing and development plans, names of employees and

information related to them, client names, contacts, and other proprietary information related to clients, price lists, pricing policies, and financial data, information and projections. Confidential Information further includes any information described above which the Disclosing Party obtains from another party and which the Disclosing Party treats as confidential or designates as "Confidential Information", whether or not owned or developed by the Disclosing Party. SimpliMeta's Confidential Information expressly includes the SimpliMeta Pre Existing Intellectual Property. These confidentiality obligations will not restrict any disclosure required by order of a court or any government agency, provided that the Receiving Party gives prompt notice to the Disclosing Party of any such order and reasonably cooperates with the Disclosing Party at the Disclosing Party's request and expense to resist such order or to obtain a protective order.

11.3. Injunctive Relief, Survival

The Receiving Party acknowledges that, upon the breach or threatened breach by the Receiving Party of any provision contained in this Section 11, the Disclosing Party will be without an adequate remedy at law, and would suffer or be threatened with irreparable injury, and that the Disclosing Party will have the right to obtain immediate injunctive relief against the Receiving Party, in addition to all other remedies hereunder, in equity and at law. This Section 11 will survive expiration or termination of this Agreement for any reason whatsoever. Receiving Party's obligations to maintain Confidential Information as confidential under this Section 11 will continue until such time as such information is no longer confidential or a trade secret under applicable law, and all other obligations under this Section 11 will continue (i) with respect to Confidential Information which constitutes a trade secret under applicable law, until such time as such information no longer constitutes a trade secret under applicable law due to no fault of the Receiving Party, and (ii) with respect to all other Confidential Information, for a period of three (3) years after the date such Confidential Information is disclosed to such Receiving Party. Nothing in this Section 11 will be construed to limit any rights or remedies afforded to the Disclosing Party under any applicable law.

12. GENERAL PROVISIONS.

12.1. Dispute Resolution and Arbitration

In the event a dispute arising out of or relating to this Agreement is not settled between the Project Managers for the Parties, then the Parties will escalate the dispute to resolution by the President of SimpliMeta and an officer of the Client's organization to whom the Client's Project Manager reports (or comparable position of Client). If the dispute is not resolved after following these procedures, both Parties agree to submit to binding arbitration. The arbitration will be conducted in Atlanta, Georgia, in accordance with the Expedited Procedures of the American Arbitration Association's Commercial Arbitration Rules and Mediation Procedures (the "**Rules**".) A single arbitrator experienced in technology law will be selected in accordance with, and will conduct the arbitration according to, the Rules, and the decision of the arbitrator will be final and binding on both Parties; and any award thereon may be entered and enforced in any court of competent jurisdiction. The arbitrator will not render a reasoned award unless both Parties request such an award in writing prior to appointment of the arbitrator. Client understands that the arbitration provision set forth above constitutes the sole and exclusive method of resolving all controversies and claims arising out of or in any way related to this Agreement or the breach thereof. Except as may be required by law, neither Party nor the arbitrator will disclose the existence, content or results of any arbitration hereunder. Notwithstanding the foregoing, and subject to the provisions of Section 12.4, either Party may apply to a court of competent jurisdiction for injunctive or other equitable relief as may be necessary to protect such Party's intellectual property rights or Confidential Information.

12.2. Export

In the event that this Agreement permits the exportation of any of the Services, Deliverables or Products outside the U.S., Client will be solely responsible for compliance with all applicable U.S. export laws, rules, and regulations and all applicable laws, rules, and regulations of any jurisdiction(s) to or through which the Services, Deliverables or Products are transmitted, transported or imported. Client agrees to keep such books and records and to take other actions as may be required by such applicable laws, rules, and regulations. Client will defend, indemnify, and hold harmless SimpliMeta and its successors or assigns, affiliates, subsidiaries, officers, directors, employees, agents, and independent contractors against any and all claims, liability, loss, damage, or harm (including without limitation reasonable legal and accounting fees) arising from or in connection with Client's failure to comply with any such laws, rules or regulations. All of the foregoing are expressly made third party beneficiaries of this Section.

12.3. Force Majeure

No Party shall be responsible for any default, delay or failure to perform if such default, delay or failure to perform is due to causes beyond such Party's reasonable control, including, but not limited to, strikes, lockouts, actions or inactions of governmental authorities, pandemics, epidemics, war, embargoes, fire, earthquake, acts of God or the default of a common carrier. In the event of a default, delay or failure to

perform due to causes beyond such Party's reasonable control, any date or times by which the Parties are otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the cause beyond the reasonable control of such Party.

12.4. Construction, Venue, Jurisdiction

This Agreement and any claim, action, suit, proceeding or dispute arising out of or in connection with this Agreement will in all respects be governed by, and interpreted in accordance with, the substantive laws of the State of Georgia, excepting any of such laws that might apply the laws of another jurisdiction. This Agreement shall be deemed to have been made in Atlanta, Georgia, U.S.A. and shall be effective only after being signed on behalf of SimpliMeta. Venue for any claim, action, suit, proceeding or dispute arising out of or in connection with this Agreement will lie exclusively in the courts located in Fulton County, Georgia or the United States District Court for the Northern District of Georgia, Atlanta Division. Each Party hereby irrevocably submits to the personal jurisdiction and exclusive venue of the named courts, and waives lack of personal jurisdiction, improper venue or forum non conveniens as a defense to any such action.

12.5. Waiver; Amendment

No waiver of any right or remedy will be valid unless in writing and delivered to the other Party, and waiver of a right or remedy on one occasion by a Party will not be deemed a waiver of such right or remedy on any other occasion. This Agreement may be amended or modified at any time by SimpliMeta.

12.6. Entire Agreement

This Agreement includes and incorporates all SOWs and Order Forms entered into hereunder and all referenced or attached exhibits, schedules, attachments or documents, and sets forth the entire agreement and understanding between the Parties pertaining to their subject matter, superseding all prior or contemporaneous discussions, agreements, promises or understandings between the Parties pertaining to their subject matter. Any additional or varying terms contained in Client's preprinted forms, correspondence or other documents transmitted to SimpliMeta will be of no effect, unless otherwise expressly provided in the Agreement. This Agreement may be executed in multiple counterparts, each of which will be deemed an original and all of which taken together will constitute one and the same Agreement.

12.7. Assignment

This Agreement and the rights and obligations hereunder may not be assigned in whole or in part by either Party without the prior written consent of the other, except that this Agreement may be assigned by a Party to another entity in connection with a reorganization, merger, consolidation, acquisition or other restructuring involving all or substantially all of the voting securities and/or assets of such Party, provided written notice of such assignment is provided to the other Party promptly thereafter. Any purported assignment in violation of the foregoing will be null and void. This Agreement will be binding upon, and inure to the benefit of, the Parties, their legal representatives, successors, and permitted assigns as permitted by this Agreement. Nothing in this Agreement will be construed to create any rights enforceable by any person or entity who is not a named Party or its permitted assignee.

12.8. Notices

Any notices required by this Agreement shall be made in writing and shall be delivered in person, sent by overnight courier, facsimile or by certified mail, return-receipt-requested, to the other Party's address as it appears in this Agreement or to any other address specified by the receiving party in writing. All such notices will be deemed received by the other Party (a) upon delivery if delivered by hand, (b) on the third day after dispatch if sent by registered or certified mail, (c) on the next day after dispatch if sent by overnight courier and (d) on the day of dispatch if sent by facsimile.

12.9. Severability

If any term, clause or covenant of this Agreement shall be unenforceable under such law, courts are authorized to modify and reform such term, clause or covenant to make it enforceable and if such reformation is not possible, such term, clause or covenant shall be deemed ineffective to the extent of such unenforceability and such clause shall be severed from the remainder of this Agreement without invalidating the remainder of any provision containing such clause or the remaining provisions of this Agreement.

12.10. Independent Contractor

The Parties acknowledge that its relationship with the other will be that of an independent contractor, and nothing contained in this Agreement will be construed as establishing any agency, employer/employee relationship, partnership or joint venture between SimpliMeta Engineering and Client.

12.11. Non-Solicitation/Hiring Restrictions

During the term of this Agreement and all SOWs, and for a period of one (1) year following the later of the complete termination or expiration of this Agreement and all SOWs, Client shall not, without SimpliMeta's prior written consent, hire, attempt to hire, solicit to hire, or contract with any employee or

independent contractor, subcontractor or agent of SimpliMeta that was involved in the performance and delivery of the Services, Deliverables and Products as the case may be. In the event of a breach of this Section 12.11 with regard to Client hiring an employee of SimpliMeta, either for employment or as an independent contractor and without written consent of SimpliMeta (which consent may be given or withheld in SimpliMeta's sole discretion), in addition to any other remedies available to it at law and in equity, SimpliMeta shall be entitled to recover immediately upon written demand therefor a fee equivalent to twelve (12) months' salary (or salary equivalent) the employee would have received from SimpliMeta had not the Client hired the employee from SimpliMeta.