

# Master Services Agreement



This Master Service Agreement (this “Agreement”) is made and entered into by Itrica Corp., a Delaware corporation (“Itrica”) and the client (“Client”) identified on a service order form entered into hereunder and incorporating this Agreement by reference (each a “Service Order”). In consideration of the promises and mutual covenants set forth herein and in one or more Service Orders entered into between the parties hereunder, the parties hereby agree as follows:

current term; provided that notwithstanding anything to the contrary herein, including any renewal of the term of this Agreement pursuant to this Section 2, (i) this Agreement shall terminate and expire at such time as no Service Orders are in effect and outstanding hereunder, and (ii) the terms of this Agreement shall be deemed to continue in force at all times when at least one Service Order is in effect and outstanding hereunder.

- 1. Services.** The parties shall execute one or more Service Orders. Each Service Order shall describe the services to be provided by Itrica to Client thereunder, the fees to be paid by Client to Itrica thereunder, and any other terms and conditions applicable to the services of each Service Order. No Service Order shall be binding until it has been signed by a duly authorized representative of each of Itrica and Client. As used herein, the term “Services” refers collectively to all services identified in all Service Orders entered into hereunder and may include standard services provided by Itrica to its customers, and any technical, supplemental professional, or other services. As used herein, the term “Third Party Products” means third-party hardware and/or software identified on a Service Order as being provided by Itrica to Client. As used herein, the term “Fees” refers to all fees payable to Itrica by Client identified in this Agreement and any Service Order hereunder, and may include recurring fees, one-time fees, fees for Third Party Products or services, reimbursable expenses, and costs.
- 2. Term.** This Agreement shall commence upon the Effective Date specified in the first Service Order entered into hereunder and, unless terminated sooner in accordance with the terms of this Agreement, shall continue in effect for a period of one (1) year from the Effective Date. Thereafter this Agreement will automatically renew for successive renewal terms equal to the term specified in the Service Order, or if no such term is specified, for one-year renewal terms unless either party provides written notice of non-renewal at least ninety (90) days prior to the end of the then-
- 3. Client’s Obligations.** Client will ensure that all Client’s users adhere to the Acceptable Use Policy (“AUP”), available at <http://www.itrica.com/resources/legal/>, as amended from time to time which is incorporated herein by reference. Client will provide reasonable cooperation with Itrica to assist Itrica in provision of the Services. Client agrees that Itrica shall have no responsibility or liability arising in connection with, and that Client shall be responsible for any property of Client located or stored by Client on Itrica’s premises, and Client shall indemnify Itrica for any damages, liabilities, costs, or expenses arising as a result of or in connection with such property.
- 4. Itrica’s Obligations.** Itrica will use commercially reasonable efforts to perform the Services as set forth in any applicable Service Order and to adhere to the Service Level Agreement (“SLA”), the terms of which are available at <http://www.itrica.com/resources/legal/>, and which are incorporated herein by reference.
- 5. Third-Party Products.** Client understands and acknowledges that in performing the Services Itrica may use, or furnish to Client, Third Party Products and the use or distribution thereof may be subject to third-party terms and conditions. Client agrees to abide by the terms of all third-party manufacturer, purchase, distribution, licensing, or other agreements and policies applicable to any such Third-Party Products.
- 6. Services Settings and Customization.** “Client Services” are Services that permit certain

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settings or features to be adjusted by Client through the use of the Itrica UI (as defined below). “Authorized Person” means an employee or other duly authorized representative of Client designated by Client to administer the Client Services. “Itrica UI” means Itrica’s portal and/or other software user interfaces through which an Authorized Person may access the adjustable settings or features of the Client Services. Access to the Itrica UI by an Authorized Person is accomplished through the use of a username and password. Upon account setup, each Authorized Person designated by Client will be provided a user name and receive a temporary password and, upon initial login, shall select a unique password by updating the temporary password provided by Itrica at the time of account setup. Additional Authorized Persons may be added to Client’s account upon reasonable request by Client. Each Authorized Person shall receive a unique user name and temporary password from Itrica at the time such Authorized Person is added to Client’s account. Client shall be responsible for the security of the user names and passwords of its Authorized Persons and shall cause each of Client’s Authorized Persons to keep such Authorized Person’s user name and password strictly confidential to prevent unauthorized use. Except in the case of gross negligence or willful misconduct by Itrica, Itrica shall have no liability for any use (including unauthorized use) of the Itrica UI or the user names or passwords of Client’s Authorized Persons. Client shall be responsible for all additional fees and charges resulting from adjustments to the settings or features of the Client Services.

7. Payment Terms. Unless otherwise specified in the applicable Service Order, on the first business day of each calendar month, Itrica will initiate an ACH payment for Services provided to Client based on the bank routing and account information provided by Client on the ACH form completed at the time of account setup (or per any revision Master Service Agreement to said document provided by Client). Payment is made in advance of

services provided each calendar month. Itrica will simultaneously initiate an ACH payment for any variable or special fees or charges in arrears, including any increased charges due to the order of additional Services or change of settings for the Services as described in Section 6 above. Itrica will make a monthly statement available to Client via the Itrica UI by the 15th business day of each calendar month. Client shall pay all applicable taxes out of the activities under this Agreement and each Service Order hereunder, other than income taxes of Itrica arising out of payments made by Client to Itrica hereunder. If Client claims a tax exemption, deduction, or credit, Client shall hold Itrica harmless for any and all disallowed exemptions, deductions, or credits, including taxes, penalties and interest. All billing disputes must be emailed to [billing@itrica.com](mailto:billing@itrica.com) and must be received by the twentieth (20th) business day of the calendar month of the charge being disputed. Disputes not made within this timeframe are waived by Client. Late payments will accrue interest at a rate of 1.5% per month or the highest rate allowed by applicable law, whichever is lower. Client agrees to pay all fees and costs related to Itrica exercising its rights under this Agreement or applicable law for enforcing this Agreement (including any Service Order hereunder, the AUP, the SLA, or the Privacy Policy), in each case with respect to collection of payments due to Itrica including attorneys’ fees, court costs, and collection agency fees. Itrica will increase monthly service rates by 3% each calendar year to account for general inflation unless specific contract/agreement indicates price is locked in for duration of contract.

8. Ownership; All Rights Reserved. Client acknowledges and agrees that (i) all right, title and interest in and to the Services and all intellectual property rights embodied therein or related thereto (including all patents, copyrights, trade secrets, trademarks and other proprietary rights) (collectively, the “Itrica Technology”), are and shall remain exclusively the property of Itrica (or its third party licensors); and (ii) no interest in the

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Services or the Itrica Technology is conveyed to Client hereby other than the limited right to receive Services in accordance with the terms of Service Orders entered into hereunder. Any comments regarding or suggestions for improvements to the Services or the Itrica Technology (“Feedback”), shall be the property of Itrica, and Client hereby assigns to Itrica all right, title and interest in and to any Feedback and similar information and agrees that Itrica may use such Feedback and similar information for any business purposes without restriction, including, without limitation, for improving the Services and the Itrica Technology.

9. Confidentiality. Each party agrees not to disclose (except to its officers, directors, employees, independent contractors, advisors, agents representatives, equity holders, and affiliates (collectively, “Representatives”) who are bound by enforceable obligations of confidentiality substantially similar to those set forth herein) and to use only for purposes of exercising its rights hereunder and performing its obligations hereunder all information (i) belonging to, or in the possession or control of, a party that is marked confidential or proprietary when disclosed to the other party, or, if orally disclosed, is documented in writing to the other party within thirty (30) days of the date of disclosure identifying the disclosure identifying the disclosure as confidential, or (ii) concerning the other party’s business or its ideas, products, customers or services that would reasonably be considered to be confidential or proprietary information of the other party by the party receiving such information (collectively, “Confidential Information”). Notwithstanding the foregoing, Confidential information does not include (a) any information in the public domain by means other than a breach of this provision by the receiving party, (b) information received by the receiving party from a third party without breach of obligations of confidentiality to the disclosing party, or (c) information independently developed by the receiving party without use of or reference to the

Confidential Information of the disclosing party. The obligations of confidentiality set forth herein shall not apply to the extent a party is required by applicable law or judicial or regulatory process to be disclosed; provided, however, that the party required by law or judicial or regulatory process to disclose such Confidential Information of the other party shall provide the owner of the Confidential Information notice of the requirement of such disclosure in a timely matter to permit the owner to challenge and/or restrict such disclosure. If the receiving party is required by law or judicial or regulatory process to make such disclosure, upon request from the disclosing party, the receiving party shall assist the disclosing party (at the disclosing party’s cost and expense) in seeking a protective order or otherwise to avoid or limit such disclosure to the extent permitted by law. In each case the receiving party shall be responsible for any disclosure by its Representatives of Confidential Information of the disclosing party as if such disclosure were made directly by the receiving party.

10. Disclaimer; Limitations of Liability. EXCEPT AS EXPRESSLY STATED HEREIN OR IN AN APPLICABLE SERVICE ORDER, ITRICA MAKES NO REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. ALL THIRD-PARTY PRODUCTS ARE PROVIDED ON AN AS IS BASIS, AND ITRICA MAKES NO REPRESENTATIONS OR WARRANTIES (INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS AND WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE) REGARDING ANY THIRD PARTY PRODUCTS AND SHALL HAVE NO LIABILITY UNDER ANY THEORY OF LAW, FOR ANY THIRD PARTY PRODUCTS OR SERVICES PROVIDED HEREUNDER. IN NO EVENT

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SHALL ITRICA BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, OR FOR LOST PROFITS OR LOST DATA, REGARDLESS OF THE THEORY OF LAW, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM. IN NO EVENT SHALL ITRICA'S LIABILITY HEREUNDER, REGARDLESS OF THE THEORY OF LAW, EXCEED THE AMOUNT DUE ITRICA UNDER THE APPLICABLE SERVICE ORDER IN THE THREE (3) MONTHS PRECEDING SUCH CLAIM, IF ANY.

11. **Publicity and Promotion.** Neither Client nor Itrica will, without the prior written consent of the other party (not to be unreasonably withheld), publicly use, distribute, or otherwise issue or disclose to any third party any proposed press release, advertisement or other promotion or announcement relating to the existence of this Agreement or any Service Order, the relationship of the parties, or the Services called for on the Service Order forms, and each party will offer the other party the opportunity to review any such materials prior to publication. Client hereby grants Itrica the right to identify Client by name as a client of Itrica on the Itrica website and in promotional materials issued by Itrica and to use Client's logos and related trademarks and service marks on its website and in its promotional materials. Neither party may otherwise publicly use the other party's logo or other trademark or service mark without the other party's prior written consent.
12. **Termination.** This Agreement, and any Service Order hereunder, may be terminated by either party upon thirty (30) days' prior written notice to the other party in the event the other party breaches this Agreement and does not cure such breach within said thirty (30) day period. Upon termination of this Agreement, all Services hereunder, including under any Service Orders, shall immediately terminate. Notwithstanding the foregoing, Itrica may immediately terminate this Agreement, and

any Service Order hereunder, at any time, and without liability, upon the occurrence of any of the following ("Itrica Termination"): (i) Client fails to pay any overdue invoice amount upon notice by Itrica; (ii) Client ceases to do business in the normal course, becomes or is being declared insolvent or bankrupt, is the subject of any proceeding relating to liquidation or insolvency which is not dismissed within sixty (60) calendar days, or makes an assignment for the benefit of its creditors; (iii) Client violates AUP or any other applicable policy of Itrica; or (iv) Client continues to host content that may subject Itrica to legal liability (in which case, Itrica may also modify or suspend the Service to avoid such liability). In the event of termination of this Agreement or any Service Order hereunder for any reason, Client shall (a) pay to Itrica any Fees or other amounts owed to Itrica hereunder or thereunder as of the effective date of such termination, including a pro-rated Fee based on the number of days Itrica provided services in the applicable billing period prior to the date of termination, (b) pay to Itrica an amount equal to the Fees owed to Itrica for the remainder of the then current term of this Agreement, (c) if the Services include software for which Itrica does not then provide general client support, Client shall pay to Itrica an amount equal to Itrica's cost of such software for the entire term any applicable renewal terms thereunder, and (d) return to Itrica all software, access keys, equipment and any other property provided to Client by Itrica thereunder. In the event Client has any property located at Itrica's premises, upon termination of the Agreement Client and Itrica will mutually make arrangements for the removal of such property, and any property of Client not removed from Itrica's premises within thirty (30) days of such termination shall become the property of Itrica, which may, among other things, dispose of such property without the payment of any compensation to Client. Upon termination of this Agreement, each party will return or destroy all Confidential Information (including all copies and records thereof, in whatsoever form or medium) belonging to the

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other party. In no event shall Itrica be obligated to refund amounts already paid by Client. The provisions of Sections 5 and 7-10, as well as any other provisions that by their nature survive the expiration or termination of this Agreement, shall survive termination of this Agreement for any reason.

13. **Governing Law, Jurisdiction, and Venue.** This Agreement, and all Service Orders hereunder, shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to principles of conflicts of law that would result in the application of the laws of another jurisdiction. All legal proceedings arising hereunder shall be exclusively brought and exclusively maintained in the state and U.S. federal courts located in the State of Delaware, and Client hereby irrevocably consents to the jurisdiction and venue of such courts and hereby waives any objection to the jurisdiction and venue of such courts.
14. **Assignment.** Client may not assign or otherwise transfer this Agreement or its rights or obligations hereunder, in whole or in part, without the prior written consent of Itrica, which will not be unreasonably withheld. This Agreement shall be binding upon and accrue to the benefit of any permitted assignee or successor, and any such assignee or successor shall perform the obligations of its assignor or predecessor.
15. **Notices.** Any notice required or permitted to be given hereunder shall be in writing and shall be delivered to the parties at their addresses set forth herein unless such addresses are changed by written notice. Notices shall be effective upon delivery (a) in person, (b) by certified mail, postage prepaid, return receipt requested, by the receiving party, (c) by a recognized commercial overnight courier that guarantees next day delivery and provides a delivery receipt, or (d) upon confirmed successful transmission if sent by facsimile or by email. In the case of facsimile or email transmission of notices, any notice to Itrica shall be sent to

legal@itrica.com and notices to Client shall be sent to the then-current facsimile or email address associated with Client's account accessible through the Itrica UI. Client may at any time log into Client's account and update Client's contact information by accessing their account at <http://portal.cloudproviderusa.com>.

16. **Independent Parties.** This Agreement is by and between independent parties. Nothing herein shall be construed or interpreted to give rise to an agency, partnership, franchise, employment, or joint venture relationship.
17. **Force Majeure.** Neither party shall be liable in damages or have the right to terminate the Agreement to the extent (but only to the extent) any delay or default in performing hereunder is caused by conditions beyond its control including, but not limited to, weather and other Acts of God, government restrictions, acts of terrorism, wars, insurrections and/or any other catastrophic event beyond the control of the party whose performance is affected, provided that, if the duration of the delay caused by such an event shall exceed fifteen (15) days, the party who was to benefit from the performance of such act shall have the right to terminate the Agreement and any Service Order hereunder upon written notice to the other party.
18. **Employee Non-Solicitation.** During the term of this Agreement and for a period of twelve (12) months thereafter, Client shall not, directly or indirectly, either alone or in association with others, (i) solicit any employee of the Company to leave the employ of the Company, (ii) solicit for employment, hire or engage as an independent contractor, or permit any organization directly or indirectly controlled by the Consultant to solicit for employment, hire or engage as an independent contractor, any person who was employed by the Company at any time during the term of the Consultant's engagement with the Company; provided, that this clause (ii) shall not apply to any individual whose employment with the Company has been terminated for a period of one year or longer, or (iii) solicit

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clients or customers of Itrica (which have been identified to Client as such) in a manner that could cause such clients and customers of Itrica to cease or materially decrease their patronage or commercial relationship with Itrica.

19. Entire Agreement; Amendments. This Agreement, together with any applicable Service Order entered into hereunder, the AUP, the SLA, and Itrica's Privacy Policy, each of which are incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof and, with respect to each respective Service Order, the subject matter thereof, and supersedes all prior agreements with respect to such subject matter, whether express or implied. By execution of any Service Order hereunder, Client represents, acknowledges, and agrees that it has read and agrees to the terms and conditions of this Agreement, the AUP, the SLA, Itrica's Privacy Policy, and all applicable Third-Party Product purchase and license agreements. This Agreement may not be amended or modified without the written consent of a duly authorized representative of Itrica. Itrica may amend or adopt changes to (i) this Agreement, (ii) the AUP, or (iii) the SLA, or its Privacy Policy from time to time in its discretion in accordance with the terms of such respective documents; provided that if Itrica adopts any such amendments or changes to (i) this Agreement, (ii) the AUP, or (iii) the SLA, Itrica will notify Client at least thirty (30) days in advance of the effective date of any such amendment or change that Itrica determines to be material. Such amendments will take effect on the date identified by Itrica in its notice to Client (or on the first day following the expiration of the aforementioned notice period if no effective date is specified in such notice), provided that if Client notifies Itrica in writing of an objection to such amendment prior to the date such amendment takes effect, the effective date of such amendment with respect to Client will be deferred until the first day of the next renewal term as set forth in Section 2 above.

20. General. Any ambiguities in this Agreement or any Service Order hereunder shall not be strictly construed against the drafter of the language concerned but shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of contracting. If one or more of the provisions contained in this Agreement, or any Service Order hereunder, are found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected. In this event, the parties may replace the unenforceable provision with an enforceable provision that preserves the original intent and position of the parties. No term or provision of the Agreement or any Service Order hereunder, shall be deemed waived and no breach or default shall be deemed excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. No consent by any party to, or waiver of, a breach or default by the other, whether express or implied, shall constitute a consent to, waiver of, or excuse for any different or subsequent breach or default.