

# Rithom Consulting LLC

## Master Services Agreement

### Effective 4-16-23

This Master Services Agreement ("Agreement") sets forth the terms under which RITHOM CONSULTING LLC (referred to as "Rithom") and ("Client") will commence as defined by the Ordering Document ("Effective Date"). The Parties above are hereinafter individually referred to as a "Party" and collectively as "Parties".

NOW, THEREFORE, the Parties agree as follows:

## 1. Engagement.

- 1.1. The term of this Agreement shall begin upon the Effective Date of the Ordering Document and continue until terminated in accordance Section 7 "Termination" (the "Term").
- 1.2. During the Term of this Agreement, Rithom will provide certain contracted Services to Client in accordance with one of the purchase methods described below and as more specifically set forth in a separate Statement of Work, Support Quote, Services Agreement, Change Request, or an Order Form (individually or collectively referred to herein as an "Ordering Document") agreed to between the Parties ("Services").
- 1.3. The terms of this Agreement shall control all Services hereunder (even where an Ordering Document lacks an express reference to this Agreement) and shall supersede additional or conflicting terms issued by either party at any time. This Agreement may not be modified unless agreed to, in writing, and signed by each Party.

## 2. Procurement of Services.

- 2.1. **Statement of Work Procurements.** Together with the terms of this Agreement, each Ordering Document will be effective as of the date that it is countersigned by Client. Each Ordering Document will describe in reasonable detail the Services and Deliverables (as defined below) and the payments to be made by Client. Rithom shall use all commercially reasonable efforts to furnish the Services and Deliverables within the estimated hours and schedule set forth in the Ordering Document. Both Parties recognize such estimates are dependent on development, resource availability, funding, assistance, and other factors that may cause dates to shift or interfere with completion. Hours provided in any Ordering Document are estimated for the purpose of budgeting and actual delivered hours may be more or less than the estimated value. Rithom reserves the right to reassess a proposed Ordering Document (due to changes in the Client's environment, etc.) if Client has not accepted and executed the proposed Ordering Document within 1 month of issuance. If, at any time during Rithom's performance of Services, Client desires to implement a change to any executed Ordering Document, the Parties shall follow Rithom's standard Change Request Management Process, as described further in the Ordering Document. In no event shall the Ordering Document be altered, amended, enhanced or otherwise modified except in a writing signed by both Parties.
- 2.2. **Support Services Procurement.** Client may purchase from Rithom a set number of hours to be used by Client to receive support from Rithom (the "Support Services"). Upon receipt of payment, Rithom shall perform Support Services in accordance with the terms set forth in the Ordering Document. Rithom shall use reasonable commercial efforts to notify Client if a particular request may exceed the pre-paid number of hours, but Client remains responsible for payment of all Support Service hours consumed, even if such charges exceed the pre-purchased hours.

- 2.3. **Ad Hoc Requests.** Rithom may, in its sole discretion, provide professional opinions or assistance outside of the current Ordering Document at the then-current price for those Services, and both Parties will execute an Ordering Document reflecting such Services.

### 3. Project Fees and Charges, Payment Terms.

- 3.1. **Fees and Charges.** Each Ordering Document will list all of the estimated fees to be invoiced for the Project (s) and Services described. For a SOW Procurement, Rithom will track the hours consumed by Rithom to perform Services and the implementation of each Deliverable listed in the Ordering Document, and any related expenses. For a Support Services procurement, Rithom will track the hours consumed by Rithom to provide the Services described in the Ordering Document. Client will work cooperatively with Rithom Project Management to routinely review estimated hours and those consumed.
- 3.2. **Invoice.** Rithom will invoice the Client on a frequency established in the Ordering Document and shall track the hours consumed as Services are performed and expenses are incurred. Rithom shall make reasonable efforts to notify the Client in advance when invoices will exceed the estimated hours and costs described in the Ordering Document.
- 3.3. **Payment.** Client shall make payment by the due date stated on any invoice, and in accordance with the terms set forth in the Ordering Document.
- 3.4. **Late Payment Terms and Fees.** Rithom may assess a late payment fee to all invoices that are not paid by the due date specified on the invoice. If a Client payment is not received by the due date, Rithom will notify Client that payment was not received.
- 3.4.1. If Client does not make payment in full on all uncontested amounts within 5 business days of receiving such notice of late payment, Client agrees to pay a late fee equal to 1% of the invoice amount, to be applied to the invoice. For each subsequent period of 30 days that the invoice is overdue, an additional 3% fee will be applied to the invoice.
- 3.4.2. If payment is not received and/or more than one invoice is open / unpaid, Rithom reserves the right to stop work until payment is received, or until alternative options have been agreed upon by both Parties.
- 3.5. **Dispute of Charges.** In the event of a good faith dispute, Client shall pay all undisputed invoice items in accordance with the payment terms in the Ordering Document. Rithom reserves the right to withhold Deliverables, and place work on hold, while the Parties attempt to resolve the disputed invoice items, and until all undisputed payments are received.

### 4. Obligations of the Client.

- 4.1. **Access.** The Client will provide Rithom access to materials and personnel necessary for Rithom to perform the Services. Client understands and agrees that the timely and successful performance of Services by Rithom requires the punctual and accurate performance by Client of its responsibilities and provision of materials, including but not limited to, access to all third party applications and corresponding technical support documentation, if applicable (the "Client Deliverables"). Should Client fail to provide the Client Deliverables in a timely fashion, then Rithom shall be excused for not timely performing its responsibilities. In addition, Client shall be responsible for costs incurred by Rithom to the extent such late delivery is caused by Client.
- 4.2. **Review and Acceptance of Services and Deliverables.** The Client will work cooperatively with Rithom in receiving, inspecting, approving, and accepting the Services and Deliverables; defined in User Stories, Email, or Other. Client agrees that upon completion of said Services and Deliverables, Rithom shall request, via Rithom Portal and/or email, that Client acknowledge that the Services and Deliverables have been completed and approved by Client. The Client will not unreasonably withhold or delay any consent, approval, or acceptance required by Rithom. If Client does not respond to such request for acknowledgement and approval within 72 hours of the request being sent, the Services and Deliverables will be deemed complete and approved by Client, and Client will be liable for full payment of the billed amount in the corresponding invoice.

## 5. Ownership, Representations and Warranty Terms.

- 5.1. **Client Property.** All materials, documents, information, hardware and software supplied to Rithom by Client, are and shall remain, the exclusive property of Client (“Client Materials”). Any and all Deliverables that are made using Client’s Confidential Information or Client Materials pursuant to the Services, belong exclusively to Client (the “Deliverables”). Rithom hereby assigns to Client all rights, title and interest in and to all such Deliverables and Client grants to Rithom an unlimited, non-exclusive right, royalty-free license to use the Deliverables and Client Materials solely in connection with the Services provided under this Agreement and the Ordering Document.
- 5.2. **Rithom Property.** Client agrees that all (i) materials, documents, information, hardware, software, any other intellectual property owned or created by Rithom prior to any engagement by Client for the Services, (ii) ideas concepts, techniques, methodologies, and expertise and (iii) developments, enhancements, or derivatives of or to such ideas, concepts, technologies, methodologies and expertise, are and shall remain the exclusive property of Rithom (“Rithom Materials”).
- 5.2.1. To the extent that any Rithom Materials are incorporated into the Deliverables, Rithom grants Client an unlimited, non-exclusive, perpetual right and license to use the Rithom Materials solely in connection with the Deliverables and to the extent necessary for Client to fully utilize such Deliverables. Client acknowledges that Rithom’s ability to perform the Services is dependent upon Rithom and its agents’ past experience in providing similar Services to others, and that Rithom expects to continue such work in the future and Client shall not make any claim that would prohibit or inhibit Rithom from such future endeavors.
- 5.2.2. Client acknowledges that any feedback provided to Rithom about the Services or Deliverables provided will become the property of Rithom and Rithom shall retain exclusive right to any information from Client provided verbally or in writing for the purposes of feedback about the Rithom Services and Deliverables without the payment of any fees or royalties.
- 5.3. **Client’s Representation.** Client represents that any materials provided to Rithom by Client for incorporation into the Deliverable will not (a) infringe on the intellectual property rights of any third Party or any rights of publicity or privacy or (b) violate any law, statute, ordinance, or regulation.
- 5.4. **Limited Warranty.** Rithom warrants that it shall perform the Services in a professional manner, in accordance with the standards of its profession, and that its Services and Deliverables shall materially comply with the descriptions and representations contained in this Agreement and any ORDERING DOCUMENT. Rithom’s sole liability and obligation, and Client’s sole remedy for breach of this warranty, shall be for Rithom to use commercially reasonable efforts to correct, contain and/or remedy any problems encountered by Client that are a result of deficiencies in the Services provided by Rithom hereunder. Except for express representations or warranties contained in this Agreement, neither Party makes any other representations or warranties and Client agrees that the Services are provided “As Is”. Rithom expressly disclaims all implied warranties, including the implied warranties of merchantability or suitability for any particular purpose of any Deliverables or Services provided hereunder.

## 6. Confidentiality.

During the Term of this Agreement, each Party may disclose or license to the other, or either Party may obtain access to, develop or create, proprietary and confidential information or material concerning or related to the other Party’s processes, Services, software, products or general business operations (“Confidential Information”). Each Party acknowledges the confidential and secret character of the Confidential Information, and agrees that the Confidential Information is the sole, exclusive and extremely valuable property of the disclosing Party. Accordingly, without the disclosing Party’s prior written consent, the receiving Party agrees not to use the Confidential Information except in the performance of this Agreement, and not to divulge all or any part of the Confidential Information to any third party, either during or after the Term of this Agreement. The receiving Party shall protect the confidentiality, and avoid disclosure and unauthorized use, of the Confidential Information of the

disclosing Party. Without limiting the foregoing, the receiving Party shall take at least those measures that it takes to protect its own most sensitive confidential information but not less than reasonable measures.

## 7. Termination.

- 7.1. Client and Rithom shall have the right to modify, reject, or terminate any Ordering Document and any related work in process with fifteen (15) days' written notice to the other Party. In the event either Party terminates the Ordering Document prior to completion of Services, the Client shall pay Rithom the fees due under the Ordering Document with respect to Services completed as of the date of termination. Rithom will retain all non-refundable deposits and invoice for any additional amount due which Client shall promptly pay. Upon settlement of funds due to Rithom, (i) all completed and in-progress Deliverables will be transferred to the Client, (ii) all Client Materials will be returned to the Client, and (iii) upon written request from the disclosing Party, the receiving Party will destroy and verify the destruction of all Confidential Information except for such Confidential Information as is necessary for ongoing Services. The terms of this Agreement shall remain in effect following the termination of any individual Ordering Document.
- 7.2. If no Ordering Document is currently active and in progress, and there are no disputes between the Parties, and no outstanding payments owed by Client, either Party shall have the right to terminate this Agreement. The Parties agree that sections 5, 6, 7.2, 9, 10 and 11 herein will survive termination of this Agreement.

## 8. Termination

- 8.1. All notices required or otherwise sent under this Agreement must be in writing and delivered via: (i) email and concurrent notice sent via certified mail, return receipt requested, or (ii) nationally recognized overnight courier with package location and delivery tracking capabilities. Notice shall be deemed to have been given upon receipt thereof, as evidenced by the applicable documentation (electronic receipt for email, return receipt for mail, or receipt records of the courier).
- 8.2. The notice must be addressed to the respective Parties hereof using the following addresses:

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| <p><b>Mailing Address:</b><br/>Client Name<br/>Attn:</p> | <p><b>Mailing Address:</b><br/>Rithom Consulting, LLC<br/>Attn: Robert Diefenderfer<br/>9125 Raintree Lane<br/>Charlotte, NC 28277</p> |
| <p><b>Email Address:</b></p>                             | <p><b>Email Address:</b><br/><a href="mailto:Accounting@Rithom.com">Accounting@Rithom.com</a></p>                                      |

- 8.3. A Party may change its address at any time provided that it gives the other Party notice of such change in compliance with this provision.

## 9. Representations

Limitation of Liability. Rithom will not be liable for any loss of use, interruption of business, lost profits, or any indirect, special, incidental, or consequential damages of any kind regardless of the form of action, whether in contract, tort (including negligence), strict product liability, or otherwise, even if it has been advised of the possibility of such damages. In no event shall Rithom's aggregate liability under this Agreement exceed the fees paid to Rithom for the particular Service or Deliverable that caused the damages or is the subject matter of the cause of action.

## 10. Miscellaneous.

- 10.1. **Compliance with Laws.** Each Party shall perform all of its obligations under this Agreement in compliance at all times with applicable foreign, federal, state, and local statutes, orders, and regulations, including those relating to privacy and data protection.
- 10.2. **Force Majeure.** Neither Party shall be liable to the other for any delay or inability to perform its obligations under this Agreement or an Ordering Document if such delay or inability arises from any act of God, fire, natural disaster, act of government, pandemic, epidemic or any other cause beyond the reasonable control of such Party which could not be avoided by the exercise of due care. In the event of such a delay or inability to perform, the time of performance shall be extended for a period of time equal to the length of the delay, provided that if either Party is unable, as a result of a force majeure, to perform its obligations for a period longer than thirty (30) days, the other Party shall have the right to terminate the Agreement.

## 11. Governing Law and Settlement of Disputes.

- 11.1. **Choice of Law.** This Agreement will be deemed to have been made in, and shall be construed pursuant to the laws of the State of North Carolina and the applicable federal law of the United States without regard to conflicts of law provisions thereof.
- 11.2. **Agreement to Arbitrate.** In the event a dispute arises out of or in connection with this Agreement, the Parties will attempt to resolve the dispute through friendly conciliation. If the dispute is not resolved within a reasonable time, then any or all outstanding issues will be submitted to binding arbitration in accordance with the American Arbitration Association Commercial Rules of Arbitration in the State of North Carolina. The arbitration shall take place in the State of North Carolina in Mecklenburg County. Binding arbitration shall be the Parties' exclusive means of dispute resolution. Any Party and/or its witnesses shall elect to appear and participate in any such arbitration virtually by remote video platform that is acceptable to, and subject to, any rules and regulations of, the arbitrator. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Each Party will be responsible for its own attorney fees, costs, and expenses, as well as an equal share of the arbitrator's fees, unless otherwise mutually agreed. Any such arbitration shall be conducted by an arbitrator experienced in the law of contracts, and preferably also in information technology, and shall include a written record of the arbitration hearing. The Parties reserve the right to object to any individual acting as an arbitrator who shall be employed by or affiliated with a competing organization or entity. An award of arbitration shall be confirmed in a court of competent jurisdiction. Each Party hereto expressly submits to the jurisdiction of the state or federal courts located in the State of North Carolina and hereby waives any objection to the venue in such courts. The Parties agree to waive their right to a trial by jury.

## 12. Entire Agreement.

This Agreement, together with the Ordering Document issued hereunder, comprises the entire Agreement between the Parties and supersedes any and all prior and contemporaneous representations, letters, proposals, discussions, agreements, purchase orders, and understandings by or between the Parties. This Agreement may be amended or modified only in a written amendment or addendum signed by both Parties. If any provision of this Agreement is adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect. Both Parties agree that the Agreement is signed by a duly authorized company representative authorized to bind the company to its terms and Services, and no consent from any third party is required.

IN WITNESS WHEREOF the Parties have caused their duly authorized representatives to execute this Agreement as of the Effective Date of the Ordering Document from which this is referenced and agreed on. This Agreement may be amended or modified only in a written amendment or addendum signed by both Parties.

If you have any questions, please contact us here: [sales@rithom.com](mailto:sales@rithom.com)