

## MASTER SERVICE AGREEMENT

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### SECTION I - Agreement Terms and Definitions

**1. Definitions Regarding Agreement Terms.** The following capitalized terms used in this Master Service Agreement have the meanings specified in this Section, in the Statement of Work, or elsewhere in this Agreement:

- a. **“Agreement”** and/or **“the Agreement”** shall mean this Master Service Agreement, and Statement(s) of Work, taken together, fully executed by the Parties.
- b. **“Change Order”** shall mean a written request tendered to Konnectryx requesting an amendment to the terms and conditions of any Work Order.
- c. **“Customer”** or **“Client”** shall mean the person(s) and/or entity (entities) to which Konnectryx provides Services.
- d. **“Customer Materials”** shall mean all materials given to Konnectryx by Customer for use in implementation of Services.
- e. **“Customer Tasks”** shall mean the execution of the duties by Customer as agreed by the Parties to enable Konnectryx to provide Services to Customer.
- f. **“Customer Solicitation”** shall mean Customer recruitment (or attempted recruitment) of Konnectryx human resources during Employee Term.
- g. **“Deliverables”** shall mean the specific completed work tasks Konnectryx shall complete for Customer as set forth by the Parties and outlined in SECTION II of the SOW.
- h. **“Effective Date”** shall mean the date on which the Parties execute both the SOW and MSA. In the event the documents are executed at different times, the date the MSA is signed shall serve as the retroactive (or current) Effective Date.

- i. **“Employee Resources”** shall mean any employee, independent contractor, or subcontractor engaged by either of the Parties.
- j. **“Employee Term”** shall mean that period during Konnectryx’s performance of the Services where Customer is prohibited from soliciting Konnectryx Employees (or any individual Konnectryx has an agreement with to provide Services to Customer), extending to no less than 90 days after Konnectryx has completed Services for Customer, or after termination of business relationship.
- k. **“Konnectryx”** shall mean Konnectryx, Inc., a California Corporation.
- l. **“Inventions”** shall mean all works of authorship, inventions, discoveries, improvements, methods, processes, formulas, designs, techniques, and information conceived, discovered, developed or otherwise made (as necessary to establish authorship, inventorship, or ownership) by Konnectryx in the course of performing the Services under a Work Order; or that form all or part of a deliverable provided as part of the Services under a Work Order, but excluding Konnectryx’s Pre-Existing Materials.
- m. **“MSA”** shall mean “Master Service Agreement,” which, when executed fully with the SOW, forms the Agreement between the Parties.
- n. **“Pre-Existing Materials”** shall mean all materials each party possesses (including but not limited to know-how, documents, business methods and procedures, proprietary programs, and human resources) before the Parties execute this Agreement.
- o. **“Project Lead”** shall mean the individual designated by each Party from its organization through which the Parties will communicate and manage a project described in a Work Order.
- p. **“Retainer”** shall mean the initial payment made by Customer to Konnectryx before Konnectryx begins implementation of Services (when applicable as specified in SECTION V), without which, no work will be performed.
- q. **“Services,”** and/or **“the Services”** shall mean the work performed by Konnectryx for Client as specified in all documents executed by the Parties.
- r. **“Service Fees”** shall mean the compensation tendered to Konnectryx for implementation of the Services.
- s. **“SOW”** shall mean “Statement of Work,” part of this Agreement, which specifically outlines project deliverables, timetables, project leaders, agreement type, and further, when executed by the parties in conjunction with the MSA, encompasses the rights, responsibilities, and duties the Parties owe to one another.
- t. **“Work Order”** shall mean the specification of Konnectryx’s deliverables obligations as specified in SECTION II of the SOW.

## SECTION II - Services, Work Orders and Change Orders

1. **Services.** Subject to the terms and conditions of this Agreement, Konnectryx will perform for Customer the Services as outlined in this Agreement.
2. **Work Orders.** The specific details of the Services to be performed will be determined on a per-project basis, and the details for each project will be described in a written Work Order, substantially in the form of the Statement of Work comprising part this Agreement, that is executed by both parties. Once executed by both parties, each Work Order will be a unique agreement which incorporates the terms of this Agreement and stands alone with respect to all other Work Orders. If there is a conflict between the

terms of this Agreement and the terms of a Work Order, the terms of this Agreement will control unless the Work Order states that a specific provision of this Agreement will be superseded by a specific provision of the Work Order.

**3. Change Orders.** Unless otherwise specified in a Work Order, Customer may reasonably request in writing that revisions be made with respect to the Services or deliverables set forth in that Work Order in the form of a Change Order. If a Change Order recites revisions that materially increase the scope of the Services or the effort required to deliver deliverables under the applicable Work Order, then within 10 business days after Konnectryx's receipt of the Change Order, Konnectryx will deliver to Customer a written, revised Work Order reflecting Konnectryx's reasonable determination of the revised Services, deliverables, delivery schedule, and payment schedule, if any, that will apply to the implementation of the revisions. If Customer approves the revised Work Order, then the Parties will execute it, and upon execution, the revised Work Order will supersede the then-existing Work Order. If Customer does not approve the revised Work Order within ten business days after its receipt by Customer, the then-existing Work Order will remain in full force and effect, and Konnectryx will have no further obligation with respect to the applicable Change Order.

## SECTION III - Obligations of the Parties

**1. Konnectryx's Obligations.** Konnectryx will perform all of the activities, tasks, and deliverables for the project as detailed in SECTION IV of the SOW: Project Tasks & Deliverables.

**2. Customer Obligations.** Customer shall be responsible for completing the following Tasks:

- (1) Assign a dedicated internal project manager as a single point of contact for Konnectryx project manager for the duration of the project as specified in SECTION IV of this Agreement
- (2) Define and maintain the business objectives and requirements that will guide use of the Konnectryx application.
- (3) Provide Konnectryx with continuous, administrative access to the Konnectryx application environment. This will require Internet access when onsite at Customer location.
- (4) Provide application administration and training outside of the scope of the SOW.
- (5) Ensure that data to be imported is clean and has no duplicates (unless this is part of the SOW).
- (6) Provide assistance, cooperation, information, equipment, data, a suitable work environment and resources reasonably necessary to enable Konnectryx to perform the Services.

**3. Customer Acknowledgment.** Customer acknowledges that Konnectryx's ability to provide the Services as described in the SOW may be affected if Customer does not provide reasonable assistance as set forth in the MSA and SOW. Konnectryx will be relieved of its milestone dates for the same number of days that Customer Obligations as set forth above are not met. If the scope expands beyond the deliverables defined in the SOW, Customer may elect to pay Konnectryx additional fees and expenses incurred by Konnectryx to bring the project up to date with the milestones set forth herein. If

Customer elects not to pay such additional fees, Customer acknowledges that the project milestones may be impacted and can be revised at Konnectryx's sole discretion.

4. **Record Keeping.** Both Parties will share the duty of maintaining accurate records. Specifically, each Party shall keep EXHIBIT B to the MSA current with respect to amendments to any SOWs and Change Orders.

## SECTION IV - Performance

1. **Project Management.** For each project, each party will designate a Project Lead. The

Project Lead will meet as necessary to manage the Services to be performed under a Work Order. Disputes will be escalated to more senior executives only if the Project Lead are unable to resolve a problem. Konnectryx's Project Lead will provide Customers' Project Lead with regular reports on the status of the Services at least once per month. Project Lead are to be listed in SECTION II of the SOW.

2. **Performance Standard.** Konnectryx will perform the Services in accordance with the applicable Work Order, including any specifications in the Work Order. Konnectryx will use reasonable efforts to complete the Services, including the delivery of any Deliverables, in accordance with the schedule of times and milestones specified in SECTION II of the SOW.

3. **Subcontractors.** Konnectryx may utilize independent contractors to perform all or part of the Services. Konnectryx will remain solely responsible for the performance of all of the Services which are subcontracted.

4. **Customer Satisfaction.** Upon completion of any Deliverable, Konnectryx shall provide a complete copy thereof to Customer. At Customers' request, Konnectryx will demonstrate to Customer the functionality of the Deliverable in accordance with any specifications set forth in SECTION II (4) of the SOW: Summary of Deliverables.

5. **Customer Quality Standards.** Customer shall be responsible for any additional review and testing of such Deliverable in accordance with any applicable acceptance criteria and test suites, as agreed by the Parties for each Deliverable.

6. **Customer Right and Procedure to Demand Cure.** If Customer, in its reasonable and good faith judgment, determines that any submitted Deliverable does not perform the functional requirements specified for such Deliverable in the SOW, Customer shall have an acceptance period lasting ten (10) working days after Konnectryx's submission of the Deliverable to give written notice thereof to Konnectryx, specifying the deficiencies in detail. Konnectryx shall use commercially reasonable efforts to promptly cure any such deficiencies within twenty (20) working days of such notice. After completing any such cure, Konnectryx shall resubmit the Deliverable for review and testing as set forth above.

7. **Customer Acceptance.** Upon accepting any Deliverable submitted by Konnectryx,

Customer shall provide to Konnectryx a written acceptance of such Deliverable. Notwithstanding the foregoing, if Customer fails to reject any Deliverable within the acceptance period and in the manner described above, such Deliverable shall be deemed accepted at the end of the acceptance period.

## SECTION V - Retainer and Compensation

1. **Mandatory Retainer.** Konnectryx and Client may elect to structure Agreement in one of four ways as outlined in SCHEDULE V below. The Agreement Type will be specified in SECTION II (1) of the SOW.

Agreement Type	Type F	Type B	Type D	Type D-1
Agreement Characteristics	Contract less than US\$5,000	Contract more than US\$5,000	Time and Materials (T&M)	Ongoing Consultation
Client Retainer Requirement	Full amount due at time of contract Signing	Retainer comprised of 50% of total cost required for Konnectryx to begin the Services	Variable retainer required (generally 20%) or other amount negotiated with Client	Full balance of Discounted Hours for complete Period paid in full at contract Signing

**Type F.** For Deals comprising a total value of \$5,000.00 USD or less, Konnectryx must be paid the full amount upon execution of the MSA and SOW by the Parties before Konnectryx can begin performing Services.

**Type B.** For Deals comprising a total value of more than \$5,000.USD, and not performed on a time and materials basis, Konnectryx must be paid 50% of the total price agreed upon by the Parties before Konnectryx can begin performing Services.

**Type D.** For Time and Materials Agreements, Konnectryx will implement the Services for Client on an hourly basis based on deliverable complexity and cost of materials. The specifics of Konnectryx rates are outlined in SECTION II (4) of the SOW.

**Type D-1.** For Ongoing Consultation Agreements, Konnectryx will apply a Discounted Flat Rate “(DFR)” for a predetermined number of Hours in a given Period. (One Period = Three, Six, or Twelve Months, unless otherwise specified by the Parties.) In any given Period, the value of the DFR shall not exceed \$50,000.00 USD. DFR rates are allocated evenly per month throughout a given Period, and cannot be front or back loaded. (i.e., Hours not used in a given month within a Period do not carry over into a subsequent month within that same period. Nor do unused Period hours transfer to additional Periods.) In a given month, if Customer utilizes Konnectryx for Services for time exceeding monthly DFR allocation, the prevailing non-discounted Konnectryx rates will apply, and not the DFR, for the remainder of that month within the Period. The following month, Customer may continue to use DFR hours until exhausted. Customer is billed

each month until completion of the Period for time exceeding pre-paid DFR hours. (EX: In a 6 mo. Ongoing Consultation agreement consisting of 60 hours of DFR, Customer pays Konnectryx for 60 hours upfront at discounted rate (DFR) for 10 hours of work, per month, for a Period of 6 months. If in any given month Customer utilizes more than 10 hours, regular Konnectryx rates apply within that month until the following month, at which time the first 10 hours will be billed at the DFR.)

2. **Fees.** Customer will pay Konnectryx, for Services, all applicable Service Fees as specified by the Agreement Type listed in SECTION II (1) of the SOW.

3. **Invoices.** Unless otherwise specified in a Work Order, Konnectryx will issue invoices to the contact Customer elects in EXHIBIT A to this MSA for Service Fees for Services which have been performed; and Customer will pay any undisputed amount set forth in an invoice no later than 30 days after receipt of Konnectryx's invoice. Any amount not paid when due will be subject to finance charges equal to two percent (2%) per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. Customer will also reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by Konnectryx to collect any amount that is not paid when due. If the Parties agree to different payment terms and conditions than those set forth in this Section V(3), and Client does not adhere to said payment terms and falls one day delinquent from said agreed payment terms, then Client acknowledges this clause becomes controlling, and payment becomes immediately due to Konnectryx, including associated penalties as stated herein. To the extent the terms of any Konnectryx invoice and this MSA conflict, this MSA shall be controlling.

4. **Invoices and Sign Off Procedures for Time and Materials (Type "D" Projects).** In addition to the invoice procedures in Section 5, sub (3), for Type "D" projects, Customer will be billed by Konnectryx on a Net15 or Net30 basis. At project start, Customer will tender Konnectryx a deposit for 20% of total estimated cost. As Konnectryx completes deliverables, the procedures outlined in Section (IV), sub sections 4, 5, 6, and 7 will apply, ensuring Customer satisfaction with Deliverable(s).

Customer will sign off on each Deliverable in 3 parts:

(1) First Sign Off will be upon Konnectryx initial completion of Deliverable. At this time, Konnectryx will tender invoice to Client.

(2) Second Sign Off will occur upon completion of amended deliverable (if necessary).

(3) Third Sign Off will be the final Sign Off and will occur when project is completed to Customer satisfaction.

(NOTE: These sign off requirements are in addition to Sign Offs as required by Client general business practices and/or negotiated by the parties in the SOW, i.e. pre-deliverable Sign Offs at project milestones).

5. **Out of Pocket Expenses.** Actual reasonable travel and out-of-pocket expenses and state sales tax, if any, are not included in the fees and will be invoiced separately, in

accordance with the Agreement. Konnectryx will seek client approval prior to incurring any Out of Pocket expenses relating to this project.

**6. Agreement to Pay.** By executing this Agreement, Customer agrees to pay for the Services described in the MSA and the SOW, under the terms of the SOW and the MSA. Customer will utilize a payment method as specified in SECTION V (7), or any other manner reduced to writing by the Parties not inconsistent with this Agreement.

**7. Payment Methods.** Customer can remit payment through either: (1) Wire Transfer (2) ACH payment or check (3) Purchase Order: Customer can issue a purchase order to Konnectryx; or (4) POEF: Customer can elect to have an authorized financial representative sign a purchase order exception form “(POEF)” , and remit payment in a manner approved of by the Parties in writing.

**8. Taxes.** Other than federal and state net income taxes imposed on Konnectryx by the United States, Customer will bear all taxes, duties, and other governmental charges “(collectively, taxes)” resulting from this Agreement. Unless otherwise specified in the applicable Work Orders, the Service Fees payable to Konnectryx under this Agreement does not include any taxes or other amounts assessed or imposed by any governmental authority.

## SECTION VI - Konnectryx Employee Resources

**1. Acquisition of Konnectryx Employee Resources.** Customer agrees and warrants that it shall not solicit, nor in any way, either express or implied, offer employment to any Konnectryx employee, independent contractor, or any individual Konnectryx has retained to assist in providing the Services to Customer during the Employee Term as defined in the MSA.

**2. Premature Acquisition of Konnectryx Resources.** If Customer attempts to acquire any Konnectryx Employee Resource prior to termination of Employee Term, Customer agrees to compensate Konnectryx based upon the following metric:

$f = [((Lt) (SI / 12)) (.45)] + [(Ct)(.950)] + [(Ls)/(.0005)]$	
f	Fee paid to Konnectryx for acquisition of resource prior to expiration of Employee Term as defined in this MSA in US Dollars
Lt	Length of time (in months) employee has worked for Konnectryx
SI	Employee yearly gross salary as paid by Konnectryx at time of Customer
Solicitation	
Ct	Number of Technical Certifications held by Employee at time of Customer Solicitation

**3. Material Clause.** Customer understands and acknowledges that Konnectryx prides itself on the high caliber of its employees and contractors, and places a high value upon such resources. Konnectryx takes into account the cost of finding and retaining its people when formulating pricing and timing of deliverables to Customer. As such, Customers' agreeing to this Section is a material and indispensable factor in Konnectryx's decision to provide Services to Customer.

**4. Mutual Application.** In consideration of Customer not soliciting Konnectryx employees during Employee Term, Konnectryx also will not solicit Customer employees during the same Employee Term as defined herein.

## **SECTION VII - Term and Termination**

**1. Term.** The term of this Agreement shall be one (2) year from the Effective Date and shall automatically renew for additional successive one (2) year terms, unless terminated by either Party upon sixty (60) days' written notice tendered to Records Custodian, as listed in EXHIBIT A to this MSA, prior to the expiration of the then current term. Each Work Order will commence on the specified Effective Date and will continue until each Party's' obligations under the Work Order have been fulfilled or the Work Order is terminated as provided in this Section.

**2. Termination for Cause.** If either Party commits a material breach in the performance of any of its obligations under this Agreement or any Work Order, then the other Party may give the breaching Party written notice of the breach (including without limitation a description of the Services with respect to which the breach has occurred, a statement of the facts relating to the breach, the applicable provisions of this document is Konnectryx Proprietary and Confidential Information and is subject to the terms of our Non-Disclosure Agreement. Neither this document this Agreement or the applicable Work Order, and the action required to cure the breach) to the custodian as listed in EXHIBIT A to the MSA, and the non-breaching Party's' intent to terminate this Agreement, or the applicable Work Order pursuant to this Section VII (2) if the breach is not cured within 30 days after the date of the notice (or a later date as may be specified in the notice). **Without limitation, any failure by Customer to timely pay to Konnectryx any amounts to be paid under the Work Order will constitute a material breach of this Agreement, and Konnectryx may, without limitation of any of its other rights and remedies available, suspend performance of any Services under any Work Order then in progress during any time that Customer fails to pay any amounts owed to Konnectryx.**

**3. Effect of Termination.** If any Work Order is terminated in accordance with this Section VII, then, unless otherwise specifically provided for in the applicable Work Order, the following will apply: the Parties will cooperate to effect an orderly, efficient, effective, and expeditious termination of the Parties' respective activities under the terminated Work Order; Konnectryx will have no obligation to perform any Services



under the terminated Work Order after the Effective Date of the termination; Customer will pay to Konnectryx any Service Fees and other amounts payable for the Services performed under the terminated Work Order through the effective date of the termination; any and all liabilities accrued prior to the effective date of the termination will survive; and the Parties' respective rights and obligations under SECTIONS IV(3); VII(3); VII(5); IX(2); X(3); and XI(1) of this Agreement with respect to any Services covered by the terminated Work Order, including the obligation to pay for the Services that were to be performed, will survive.

**4. Notice of Termination.** If the breaching party fails to cure any material breach specified in any notice under SECTION VII(2) within 30 days after the date of the notice (or a later date as may be specified in the notice), then the non-breaching party may terminate this Agreement or the Work Order covering the Services with respect to which the breach or default occurred by giving the breaching party written notice of termination.

**5. Return of Materials.** Upon the termination of this Agreement, or upon Customers' earlier request, Konnectryx will deliver to Customer all Customer Materials that are in Konnectryx's possession or control.

## **SECTION VIII - Allocations and Distributions**

**1. Proprietary Rights.** All materials existing prior to the Effective Date, including all intellectual property rights therein, shall belong to the party that owned such materials immediately prior to the Effective Date.

**2. Customer Materials.** Any materials provided by Customer to Konnectryx will be used and disclosed solely as required to perform the Services. Customer will own the Customer Materials as well as any derivatives or improvements of the Customer Materials developed or derived by Konnectryx, except as otherwise specified in Section VIII (3). Konnectryx will take reasonable steps to maintain the confidentiality of any non-public Customer Materials that are marked as Confidential."

**3. Inventions.** Except as expressly set forth to the contrary in a Work Order, upon and subject to final payment by Customer of all amounts owing to Konnectryx under the applicable Work Order, all inventions will be the property Konnectryx.

**4. Third Party Products.** Any third-party products that are provided by Konnectryx in connection with the Services are provided pursuant to the terms of the applicable third party agreement, and Konnectryx assumes no responsibility for, and specifically disclaims any liability or obligation with respect to, any third-party products.

## **SECTION IX - Warranties and Disclaimers**

**1. Mutual Warranties.** Each party represents and warrants to the other that: (1) this Agreement has been fully executed and delivered and constitutes a valid and binding

agreement enforceable against such Party in accordance with its terms; (2) no authorization or approval from any third party is required in connection with such Party's' execution, delivery, or performance of this Agreement; and (3) the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

**2. Disclaimer.** Except for the express representations and warranties stated in this section, Konnectryx makes no additional representation or warranty of any kind whether express, implied (either in fact or by operation of law), or statutory, as to any matter whatsoever. Konnectryx expressly disclaims all implied warranties of merchantability, fitness for a particular purpose, quality, accuracy, title, and non-infringement. Konnectryx does not warrant against interference with the enjoyment of any deliverables, or against infringement. Konnectryx does not warrant that any deliverables are error-free or that operation of the deliverables will be secure or uninterrupted. Konnectryx exercises no control over and expressly disclaims any liability arising out of or based upon the customers' use of the deliverables.

## **SECTION X - Limitations on Liability**

**1. Disclaimer of Consequential Damages.** Notwithstanding anything to the contrary contained in this Agreement, Konnectryx will not, under any circumstances, be liable to customer for consequential, incidental, special, or exemplary damages arising out of or related to the transaction contemplated under this Agreement, including, but not limited to lost profits or loss of business, even if Konnectryx is apprised of the likelihood of such damages occurring.

**2. Cap on Liability.** Under no circumstances will Konnectryx's total liability of all kinds arising out of or related to this Agreement (including but not limited to warranty claims), regardless of the forum and regardless of whether any action or claim is based on contract, tort, or otherwise, exceed the total amount paid by Customer to Konnectryx under the applicable Work Order (determined as of the date of any final judgment in an action).

**3. Independent Allocation of Risk.** Each provision of this Agreement that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages is to allocate the risks of this Agreement between the Parties. This allocation is reflected in the pricing offered by Konnectryx to Customer and is an essential and material element of the basis of the bargain between the Parties. Each of these provisions is severable and independent of all other provisions of this Agreement. The limitations in this SECTION X will apply notwithstanding the failure of essential purpose of any limited remedy in this Agreement.

**4. Konnectryx Indemnification.** Customer agrees to indemnify and hold harmless

Konnectryx and its affiliates and their directors, officers and employees from and against all taxes, losses, damages, liabilities, costs and expenses, including attorneys' fees and other legal expenses, arising directly or indirectly from or in connection with (i) any negligent, reckless or intentionally wrongful act of Customer or Customers' assistants, employees, contractors or agents, (ii) any breach by the Customer or Customers' assistants, employees, contractors or agents of any of the covenants contained in this Agreement, (iii) any failure of Customer to use the Deliverables in accordance with all applicable laws, rules and regulations, or (iv) any violation or claimed violation of a third party's' rights resulting in whole or in part from the Customers' use of the Inventions or other Deliverables of Konnectryx under this Agreement.

## **SECTION XI - Agreement to Arbitrate Disputes**

**1. Arbitration.** Any action to enforce or interpret this Agreement or to resolve disputes over this Agreement between the Customer and Konnectryx will be settled by arbitration in accordance with the rules of the American Arbitration Association. Arbitration will be the exclusive dispute resolution process and the Parties agree to submit to arbitration in the State of California, U.S.A.. Any party may commence arbitration by sending a written demand for arbitration to the other Party. The demand will set forth the nature of the matter to be resolved by arbitration. The Arbitration will take place at Sacramento, CA, U.S.A.. The substantive law of the State of California, U.S.A. will be applied by the arbitrator to the resolution of the dispute. The Parties will share equally all initial costs of arbitration. The prevailing party will be entitled to reimbursement of attorney fees, costs, and expenses incurred in connection with the arbitration. All decisions of the arbitrator will be final, binding, and conclusive on all Parties. Judgment may be entered on any such decision in accordance with applicable law in any court having jurisdiction of it. The arbitrator (if permitted under applicable law) or the court may issue a writ of execution to enforce the arbitrators' decision.

## **SECTION XII - Agreement Construction**

**1. Independent Contractor.** It is the express intention of the Parties that Konnectryx perform the Services as an independent contractor. Without limiting the generality of the foregoing, Konnectryx is not authorized to bind Customer to any liability or obligation or to represent that Konnectryx has any authority.

**2. Governing Law.** This Agreement will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of California, U.S.A, without reference to its choice of law rules and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. The Parties agree that any action arising out of or in connection with this Agreement will be heard in the federal, state, or local courts in Santa Clara County, California, U.S.A., and each party hereby irrevocably consents to the exclusive jurisdiction and venue of these courts.

**3. Non-assignment; Subcontractors.** Neither this Agreement nor any rights under this

Agreement may be assigned or otherwise transferred by either Party, in whole or in part, whether voluntarily or by operation of law, including through a sale or a merger, without the prior written consent of the other Party. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns. Any assignment in violation of the foregoing will be null and void.

**4. Mitigation.** Each party must mitigate the impact of any damage arising out of or related to this Agreement.

**5. Notices.** Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be delivered in person or sent by overnight air courier with some sort of tracking mechanism, in each case properly posted and fully prepaid to the appropriate address as set forth in EXHIBIT A to this MSA. Either party may change its address for notices by notice to the other party given in accordance with this Section. Notices will be deemed given at the time of actual delivery in person, three business days after receipt by the U.S. Postal Service, or one day after delivery to an overnight air courier service.

**6. Waiver.** Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of the Party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice the Party's right to take subsequent action. Exercise or enforcement by either party of any right or remedy under this Agreement will not preclude the enforcement by the party of any other right or remedy under this Agreement or that the party is entitled by law to enforce.

**7. Severability.** If any term, condition, or provision in this Agreement is found to be invalid, unlawful, or unenforceable to any extent, the Parties will endeavor in good faith to agree to amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on an amendment, the invalid term, condition, or provision will be severed from the remaining terms, conditions, and provisions of this Agreement, which will continue to be valid and enforceable to the fullest extent permitted by law.

**8. Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed to be an original and together will constitute one and the same agreement. This Agreement may also be executed and delivered by facsimile and such execution and delivery will have the same force and effect of an original document with original signatures.

**9. Headings.** Headings are used in this Agreement for reference only and will not be considered when interpreting this Agreement.

**10. Integration.** The MSA and the SOW and all Exhibits thereto contain the entire Agreement of the Parties with respect to the subject matter of this Agreement and supersede all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to said subject matter. No terms, provisions, or conditions of any Purchase Order, acknowledgement, or other business form that either party may use in connection with the transactions contemplated by this Agreement will have any effect on the rights, duties, or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of a receiving Party to object to these terms, provisions, or conditions. This Agreement may not be amended, except by a writing signed by both parties.

Public Copy

**SECTION XIII - Execution by the Parties**

**1. Party Signature and Acceptance.** By affixing their signatures below, the Parties agree to be bound by the terms of this MSA and the SOW, together, the Agreement between the Parties:

**Konnectryx**

«CONSULTING\_DOCUMENTATIO  
N\_EG\_MSAACCOUNT\_N»

**Name:**  
**Michael Amico**

**Name:**

**Title / Position:**  
**CEO**

**Title / Position:**

**Signature:**

**Signature:**

**Date:**

**Date:**