



# Master Services Agreement

This Master Services Agreement (“MSA”), combined with an applicable Order Form (defined below) referencing this MSA, together create a legal agreement (collectively the “Agreement”) between Tropic Technologies, Inc. (“Tropic” or “We”) and you, the client (“Client” or “You”). Tropic reserves the right to update this MSA from time to time, and will notify customers by email in the event of any material changes to these terms and conditions. This Agreement was last updated on March 6, 2023. It is effective between Client and Tropic as of the date of Client’s accepting this Agreement (the “Effective Date”).

**BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE, (2) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR (3) USING FREE SERVICES, CLIENT AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “CLIENT” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.**

# 1. PLATFORM AND SERVICES

Tropic has developed a software platform (“**Platform**”) that enables its customers to manage and optimize their software procurement process, while utilizing important tools and industry data to help make informed decisions regarding their software purchasing (the “**Purpose**”). In addition to the Platform, Tropic also provides various ancillary procurement, negotiation, benchmarking and advisory services (“**Services**”) to help customers optimize their procurement process and best meet their purchasing goals.

# 2. APPOINTMENT

During the Term (defined below), Client appoints Tropic as its agent solely to the extent necessary to provide the Services or otherwise assist in negotiating enterprise software, technology, or commercial agreements on behalf of Client. Notwithstanding the foregoing and for the avoidance of doubt, this appointment only extends to the right to evaluate and negotiate agreements, and Tropic shall have no right to enter into (or execute) agreements on behalf of Client. Client shall make available to Tropic the personnel, data, facilities, resources, documentation and other information reasonably requested by Tropic to enable it to perform the Services.

# 3. ORDER FORMS

Tropic shall provide Client access to the Platform and related Services as set forth in an applicable order form (each an “**Order Form**”). Each Order Form will specify, to the extent applicable, specifics and limitations surrounding: (i) the Tropic products, services and support, (ii) the length of time Client will have access to the Platform and Services (the “**Subscription Term**”), (iii) the applicable fees and payment terms, and (v) additional options, restrictions, or terms and conditions, as applicable. Any unused

Services or resources purchased pursuant to an Order Form shall expire at the end of the Subscription Term.

## **4. USE OF THE PLATFORM**

**4.1 License.** Subject to this Agreement and the applicable Order Form, Tropic grants to Client a non-exclusive, non-transferrable, right and limited license to access and use the Platform during the Subscription Term solely for the Purpose and for Client's internal business use.

**4.2 No Reverse Engineering.** Client shall not (and shall not permit any third party to): (i) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code, underlying ideas, algorithms, file formats, or interface protocols of the Platform; or (ii) modify or create derivative works from the Platform, or (iii) introduce into the Platform any virus, worm, "back door," Trojan Horse, or similar harmful code.

**4.3 Client Responsibilities.** Client will (a) be responsible for its employees', agents' and/or other representatives' compliance with this Agreement and Order Forms, (b) be responsible for the content, accuracy, quality and legality of information submitted by Client to the Platform, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Platform and notify Tropic promptly of any unauthorized access or use, and (d) use the Platform only in accordance with this Agreement, Order Forms, and applicable laws and government regulations.

**4.4 HIPAA Non-Compliance.** Unless otherwise agreed in a business associate agreement, Client acknowledges that Tropic is not a Business Associate or subcontractor (as those terms are defined in the Health Insurance Portability and Accountability Act and related amendments and regulations as updated or replaced "HIPAA") and that the Platform and Services are not HIPAA compliant. Client must not

submit, collect or use any “protected health information” as defined in 45 CFR §160.103 (“PHI”), with or to the Platform or Services, unless and until a business associate agreement is executed and Client is in compliance with the obligations therein.

**4.5 Restricted Activity.** Client shall not do any of the following (each a “**Restricted Activity**”):

- Permit access to, or use of, or make the Platform available to anyone other than as authorized in this Agreement or an Order Form;
- Use the Platform for the benefit of anyone other than Client, or sell, resell, license, sublicense, distribute, make available, rent or lease the Platform or Services in a service bureau or outsourcing offering;
- Violate any law (including but not limited to third-party privacy rights) or regulation in connection with Client’s use of the Platform or Services;
- interfere with or disrupt the integrity or performance of the Platform or any associated data or information; or
- Access or use the Platform or Services in order to build or benchmark a product or service competitive to Tropic.

## **5. PRICING AND PAYMENT TERMS**

**5.1 Fees and Payment Terms.** Client shall pay the amounts (“**Fees**”) set forth in each Order Form in consideration for its access to and use of the Platform and applicable Services. All Order Forms are non-cancelable and Fees are non-refundable, except as otherwise provided in this Agreement.

**5.2 Invoicing.** In exchange for access to the Platform and Services, Client will pay Tropic all fees due and payable under this Agreement. Tropic will issue annual, paid-in-advance invoices to Client (i.e., Tropic will invoice Client at the beginning of each 12-month period during the Subscription Term), and Client will pay such invoices within 30 days from the invoice date. If Client disputes an invoice, Client must immediately notify Tropic and pay the portion of the invoice not in dispute.

**5.3 Taxes.** Amounts payable to Tropic under this Agreement are payable in full without deduction. Tropic will pay all taxes on its income and all taxes and insurance associated with its personnel. Client will pay all applicable sales, use, service, value-added, consumption or other such taxes associated with Client's receipt of the Services.

## **6. TERM AND TERMINATION**

**6.1 Term.** This Agreement will commence on the Effective Date and will remain in effect until terminated by either party in accordance with the Agreement. Upon notice of termination of this Agreement, this Agreement will terminate on the later of (i) the date of termination of the last Order Form subject to this Agreement, or (ii) termination of Client's access to the Platform.

**6.2 Termination for Cause.** Either Party may terminate this Agreement or an applicable Order Form: (i) upon written notice if the other Party materially breaches this Agreement and fails to cure such breach within thirty (30) days following receipt of written notice specifying the breach in reasonable detail; or (ii) immediately upon written notice if the other Party becomes the subject of bankruptcy, insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding.

**6.3 Effect of Termination.** Immediately upon termination of this Agreement, all rights and licenses granted hereunder shall terminate, except as otherwise set forth herein. Termination of this Agreement shall not relieve Client of its obligation to pay all Fees owed by Client. Tropic will have no liability for any costs, losses, damages or liabilities arising out of or related to any expiration or termination of this Agreement, including any lost profits. Termination of this Agreement shall not limit either party from pursuing any other remedies available to it, including injunctive relief. In addition to any other provisions which by their terms are intended to survive, the Parties' rights and

obligations under Sections 7 (Confidential Information), 9 (Intellectual Property and Data Privacy), 10 (Indemnification), 11 (Limitation of Liability), and 12 (Miscellaneous) shall survive expiration or termination of this Agreement.

## **7. CONFIDENTIAL INFORMATION**

**7.1 Definition of Confidential Information.** “**Confidential Information**” means confidential or proprietary information provided by one Party (the “**Disclosing Party**”) to the other Party (the “**Recipient**”), either verbally or in writing, during the Term: (i) that is clearly marked or identified as confidential in writing or orally, or (ii) whose confidential nature is reasonably apparent based on the circumstances under which it was disclosed.

**7.2 Nondisclosure and Protection.** Each Party as Recipient agrees: (i) not to make the Disclosing Party’s Confidential Information available to any third party without the Disclosing Party’s prior written consent, provided that the Recipient may disclose the Disclosing Party’s Confidential Information to its officers, directors, employees, contractors and advisors who have a “need to know” for purposes of this Agreement and are themselves legally bound by nondisclosure obligations at least as restrictive as those set forth in this Agreement; and (ii) to hold the Disclosing Party’s Confidential Information in confidence using at least the degree of care that it uses with respect to its own information of like nature and value, but in any event no less than reasonable care.

**7.3 Exclusions.** A Party’s Confidential Information shall not include information that: (i) is or becomes a part of the public domain through no act or omission of the other Party; (ii) was in the other Party’s lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the Disclosing Party; (iii) is lawfully disclosed to the other Party by a third party without restriction on disclosure; or

(iv) is de-identified and anonymized to the extent that it is not possible to identify its source or origin; or (v) is independently developed by the other Party without use of or reference to the other Party's Confidential Information.

**7.4 Compelled Disclosure.** This Section 7 will not prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; provided, however, that a Party who has been subpoenaed or otherwise compelled by a valid law or court order to disclose the other Party's Confidential Information shall first, to the extent lawful, have given sufficient and prompt written notice to the other Party of the receipt of any subpoena or other request for such disclosure so as to afford the other Party an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information.

## **8. WARRANTIES**

**8.1 Tropic Warranties.** Tropic warrants that: (i) it will perform the Services in conformity in all material respects with its written procedures or as agreed upon by the parties, (ii) it will perform all Services in a professional and workmanlike manner, consistent with generally accepted industry standards and good commercial practices, and (iii) it will comply with all applicable federal, state and local laws, regulations and ordinances, be duly licensed and otherwise authorized to provide the Services, perform and satisfy all obligations that it owes to its employees and subcontractors, and remit all required payroll withholding payments to appropriate taxing authorities with respect to its employees.

**8.2 Disclaimer.** With the exception of these express warranties set forth in this section, to the maximum extent permitted by law, Tropic disclaims all warranties whether

express, implied or statutory, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

## **9. INTELLECTUAL PROPERTY AND DATA PRIVACY**

**9.1 Ownership.** Tropic owns and reserves all right, title and interest in and to the Platform, software and/or technology it provides to Client (the “**Software**”), including any and all patent rights, copyrights, trademarks, service marks, trade secret, and other intellectual property and proprietary rights, as well as any improvements, modifications, and derivative works of the Software. Except for Client’s limited right to access and use the Software as expressly set forth in the “License” section of this MSA, no right, title, or interest in or to the Software, or any improvements, modifications, or derivative works, is transferred or licensed to Client.

**9.2 Data.** Tropic may collect, compile, use, store, transfer, copy, and retain (collectively “**Process**”) information, such as prices, contractual terms, processes, tactics, discounts, and other such information, including information from third-party software and technology providers (“**Applicable Data**”) as necessary for Tropic to perform the Services in accordance with this Agreement. Client hereby grants to Tropic a non-exclusive, irrevocable, fully paid-up, royalty-free right and license to Process the Applicable Data for purposes of (i) system maintenance and performance testing; (ii) security and vulnerability risk assessments; and (iii) improving or modifying Tropic’s products or services. Tropic will store all Applicable Data in a de-identified and anonymized manner such that it is not identifiable as to any person or entity as the source or origin of such data. Client represents and warrants that Client has appropriate rights to the Applicable Data sufficient to: (a) allow Tropic to Process the Applicable Data, and (b) grant Tropic the rights specified herein.



**9.3 Privacy.** In connection with the performance of the Services, the Parties agree to comply with all applicable laws relating to data privacy, data security, or personal information. To the extent required under applicable law, the Parties shall execute and/or shall cause its affiliate(s) or contractor(s) to execute supplemental privacy and security terms, including but not limited to a data processing addendum, as required in Tropic's sole judgment for the processing and/or transfer of personal data in accordance with applicable law.

**9.4 Tools.** Tropic retains all right, title and interest in its know-how, ideas, concepts, procedures, routines, techniques, methods, systems, processes, models, templates, tools, generalized features of the structure, sequence and organization of software, user interfaces, screen designs and the like, and any enhancements made to the foregoing while performing Services. Tropic may use within the scope of its business the general knowledge, skills and experience that are developed in the course of, or learned as a result of, the provision of Services (collectively, "**Residuals**"), provided that Residuals shall not include any information that is the Client's Confidential Information.

**9.5 Feedback.** Client may, from time to time, submit or recommend to Tropic additional features, functionality, performance, comments, data, ideas, descriptions or other information (collectively, "**Feedback**") that Tropic subsequently incorporates into any Tropic products or services. Tropic and its successors and assigns may freely use, copy, disclose, sublicense, distribute, display and exploit any Feedback in connection with any of its products or services in any manner without any obligation, payment, royalty or restriction based on intellectual property rights, confidentiality or otherwise. In accordance with the foregoing, Client hereby: (i) grants Tropic a worldwide, non-exclusive, royalty-free, perpetual right and license to use and incorporate such Feedback into any Tropic product or service; and (ii) acknowledges that any Tropic

product or service incorporating such new features, functionality, or performance shall be the sole and exclusive property of Tropic. All such Feedback shall be free from any confidentiality restrictions that might otherwise apply pursuant to Section 4.

**9.6 Reservation of Rights.** Each Party reserves all rights not expressly granted to the other Party in this Agreement.

## **10. INDEMNIFICATION**

**10.1 Client Indemnification of Tropic.** Subject to the limitations contained herein, Client will indemnify and hold harmless Tropic and Tropic's employees, directors, officers, representatives and agents from and against any and all liabilities and defend against losses, expenses, damages, acts or failures to act, attorney fees, court costs and costs incurred by Tropic relating to any claim or demand by a third party that is related to or arises from: (i) Client's violation of applicable laws, rules, and regulations; or (ii) Client's material breach of this Agreement. Notwithstanding the foregoing, Client's indemnification obligations under this section shall not apply to the extent such damages, costs, expenses or liabilities are caused by Tropic's gross negligence or willful misconduct.

**10.2 Tropic Indemnification of Client.** Subject to the limitations contained herein, Tropic will indemnify and hold harmless Client and Client's employees, directors, officers, representatives and agents from and against any and all liabilities and defend against losses, expenses, damages, acts or failures to act, attorney fees, court costs and costs incurred by Client relating to any claim or demand by a third party that is related to or arises from: (i) Tropic's violation of applicable laws, rules, and regulations; (ii) Tropic's material breach of this Agreement; or (iii) a claim by a third party that the Platform or Services infringe a valid US patent or any copyright or trade secret, of such

third party. If any Tropic product or the Platform becomes or, in Tropic's opinion, is likely to become, the subject of any claim or injunction preventing its use as contemplated herein, Tropic may, at its option (i) obtain for Client the right to continue using the product or Platform, or (ii) replace or modify the product or Platform so that it becomes non-infringing without substantially compromising its principal functions. If (i) and (ii) are not reasonably available to Tropic, then Tropic may terminate this Agreement upon written notice to Client and refund to Client fees that were pre-paid for the then current term, pro-rated for the remainder thereof. Notwithstanding the foregoing, Tropic's indemnification obligations under this section shall not apply to the extent such damages, costs, expenses or liabilities are caused by Client's gross negligence or willful misconduct.

**10.3 Procedures.** Each Party's (the "**Indemnifying Party**") obligation to indemnify the other Party (the "**Indemnified Party**") under this section are conditioned upon the Indemnified Party: (i) promptly notifying the Indemnifying Party of a claim or demand in writing no later than thirty (30) days after the Indemnified Party's receipt of notification of such potential claim or demand; (ii) allowing the Indemnifying Party to assume sole control of the defense of such claim or demand and all related settlement negotiations; and (iii) providing the Indemnifying Party, at the Indemnifying Party's request and expense, with the assistance, information and authority necessary to perform its obligations under this section. Notwithstanding the foregoing, the Indemnified Party may participate in the defense of such claim or demand at its own cost, and no settlement or defense of a claim or demand by the Indemnifying Party shall include any admission or implication of wrongdoing on the part of the Indemnified Party without the Indemnified Party's prior written consent (which consent may not be unreasonably delayed or withheld).

## **11. LIMITATION OF LIABILITY**

**11.1 Limitation of Direct Damages.** EXCEPT WITH RESPECT TO EITHER PARTY'S BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS IN SECTION 7 OR INDEMNIFICATION OBLIGATIONS IN SECTION 10, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS PAID OR OWED BY CLIENT OVER THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO LIABILITY. THE LIMITATIONS OF THIS SECTION WILL APPLY TO ANY THEORY OF LIABILITY, INCLUDING THOSE BASED ON WARRANTY, CONTRACT, STATUTE, TORT OR OTHERWISE, AND EVEN SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGE, AND EVEN IF ANY REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE.

**11.2 Exclusion of Consequential Damages.** EXCEPT WITH RESPECT TO EITHER PARTY'S BREACH OF THE CONFIDENTIALITY OBLIGATIONS IN SECTION 7, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY A PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **12. MISCELLANEOUS**

**12.1 Publicity.** Tropic may use and display Client's name and logo for marketing purposes with Client's prior written permission, provided however, that Tropic will remove Client's name and logo from the Tropic website upon written request from Client.

**12.2 Waivers and Amendments.** The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right hereunder shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance, and the same shall be and remain in full force and effect. No change, amendment or modification of any provision of this Agreement shall be valid unless in writing signed by both Parties.

**12.3 Assignment.** Neither Party may assign this Agreement, in whole or in part, without the other Party's prior written consent (which will not be unreasonably withheld), except to any of its affiliates or in connection with any merger, consolidation, reorganization, sale of all or substantially all of its assets or similar transaction. Subject to the foregoing, this Agreement will be binding on and enforceable by the Parties and their respective successors and permitted assigns.

**12.4 Notices.** Any notice, communication or statement relating to this Agreement shall be in writing and deemed effective: (i) upon receipt when delivered in person; (ii) upon receipt when delivered by electronic mail; or (iii) when received by registered or certified mail, postage prepaid, return receipt requested or by nationally recognized overnight courier service, to each Party at the address set forth above.

**12.5 Governing Law and Jurisdiction.** The rights and obligations of the Parties under this Agreement shall be governed by and construed under the laws of the State of New York without reference to conflict of law principles. The exclusive venue for any disputes between the Parties will be in the state and federal courts located in New York, New York, and each Party consents to the exclusive personal jurisdiction of such courts.

**12.6 Relationship.** The relationship between the Parties established pursuant to this Agreement is that of non-exclusive, independent contractors and no joint venture, partnership, agency, franchise or employment relationship will be deemed to exist between them.

**12.7 Entire Agreement and Order of Precedence.** This Agreement sets forth the entire agreement and understanding of the Parties relating to the subject matter hereof, and merges and supersedes all prior and contemporaneous discussions and writings between them with respect to the contents hereof. If any provision (or part thereof) of this Agreement is determined by a court of competent jurisdiction as part of a final non-appealable ruling, government action or binding arbitration, to be invalid, illegal, or otherwise unenforceable, such provision shall be enforced as nearly as possible in accordance with the stated intention of the Parties, while the remainder shall remain in full force and effect and bind the Parties according to its terms. The parties agree that any term or condition stated in a Client purchase order or in any other Client order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, and (2) this Agreement. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement. This Agreement may be executed in multiple counterparts, all of which together will constitute one original document.