

# JP3 Modeling & Support Terms and Conditions

## Modeling and Support Agreement

This Services Agreement is made on [date] (the “Effective Date”) between \_\_\_\_\_ (“Customer”), and JP3 Measurement, LLC (“JP3”) with offices located at [address]. Customer and JP3 are sometimes collectively referred to herein as the “Parties” and individually as a “Party.”

### 1. Services.

(a) **Services.** JP3 will perform certain services and create and provide certain deliverables as more particularly described in Statements of Work (each an SOW and collectively SOWs) to be entered into from time to time and, upon execution by the Parties, will be made part of this Agreement (the “Services”). In the event of a conflict between the terms of an SOW and the terms of this Agreement, the terms of this Agreement shall supersede and control as to such conflict. The existence of this Agreement shall not be construed as imposing any obligation upon the JP3 to agree to an SOW or to otherwise perform any Services for the Customer.

(b) **Cooperation of Customer.** Customer agrees to comply with all reasonable requests of JP3 and shall provide JP3’s personnel with access to all documents and facilities as may be reasonably necessary for the performance of the Services under this Agreement. Customer agrees to furnish without charge adequate space at Customer's premises for use by JP3’s personnel while performing the Services.

### 2. Fees and Expenses.

(a) As full consideration for the provision of the Services, Customer shall pay JP3 fees in the amount set forth in the applicable SOW (the “Fees”), which Fees shall be paid within 30 days of receipt of any invoice by Customer. All Fees are exclusive of sales, use, excise, withholding or any other taxes applicable to the Services. All Fees are payable in United States Dollars. Any amounts due to JP3 not paid by Customer when due shall be subject to interest charges, from the date due until paid, at the rate of one and one half percent (1.5%) per month, or the highest interest rate allowable by law (whichever is less), payable monthly. If any amounts from Customer becomes past due for any reason, JP3 may at its option and without further notice withhold further Services until all amounts owed have been paid in full, and such withholding of

Services shall not be considered a breach or default of any of JP3's obligations under this Agreement.

(b) Fees shall be subject to price escalation upon the commencement of each contract year during the term of this Agreement in accordance with the increase in the Consumer Price Index Houston-The Woodlands-Sugar Land published by the U.S. Bureau of Labor Statistics or any successor thereto. ("CPI").

(c) **Expenses.** Unless expressly included in the SOW, Customer shall pay JP3 for the reasonable expenses including, but not limited to, out of pocket travel and living expenses, incurred by JP3 and its personnel in connection with its performance of the Services (the "Expenses").

### **3. Ownership of Work Product.**

(a) JP3 retains the intellectual property rights in and to all Services and related information and materials. Products, parts, Software, drawings, sketches, information, designs and manuals furnished to Customer will be and remain JP3's property and may not be copied or duplicated in any manner or submitted to any third party for examination or otherwise, without JP3's consent

(b) All data generated by Customer's use of the Services will be owned by JP3. JP3 will not disclose such data in a way that identifies it specifically with Customer.

### **4. Warranty.**

(a) **Warranty.** The Services to be performed hereunder are in the nature of professional services. JP3 does not warrant in any form the results or achievements of the Services provided or the resulting work product and deliverables. JP3 warrants that the Services will be performed by qualified personnel in a professional and workmanlike manner in accordance with the generally accepted industry standards and practices.

(b) **Limitation of Warranty.** THE WARRANTY SET FORTH IN THIS SECTION 4. IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SERVICES, WORK PRODUCT OR DELIVERABLES PROVIDED UNDER THIS AGREEMENT, OR AS TO THE RESULTS WHICH MAY BE OBTAINED THEREFROM. JP3 DISCLAIMS ANY AND ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST INFRINGEMENT. CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY IS REPERFORMANCE OF THE SERVICES, OR IF REPERFORMANCE IS NOT POSSIBLE OR CONFORMING, REFUND OF AMOUNTS PAID UNDER THIS AGREEMENT FOR SUCH NON-CONFORMING SERVICES.

**5. Confidential Information.** The Parties acknowledge that pursuant to the performance of this Agreement, one Party may disclose to the other confidential and/or sensitive information ("Confidential Information"). "Confidential Information" shall mean all information disclosed by the disclosing Party to the receiving Party during the Term of this Agreement which is non-public and either proprietary or confidential in nature and related to the disclosing Party's business or activities, including, but not limited to financial, legal, technical, marketing, sales and business information, which is (a) marked as confidential at the time of disclosure; or (b) is unmarked (e.g., disclosed orally or visually) but is identified as confidential at the time of disclosure; or (c) due to the nature of the information or the circumstances of disclosure, would be understood by a reasonable person to be confidential. The receiving Party shall maintain the Confidential Information in strict confidence and limit disclosure to only its employees, subcontractors, consultants and representatives who have a need to know such information to perform its obligations under this Agreement. The receiving Party shall protect the other's Confidential Information by using the same degree of care it uses to protect its own information of a like nature, but no less than a reasonable degree of care. The term of confidentiality shall be two (2) years from the initial date of disclosure of the Confidential Information. The receiving Party shall promptly return all copies of Confidential Information at any time upon request or within fifteen (15) days following the expiration or earlier termination of this Agreement. In no event shall JP3's use or disclosure of information regarding or relating to the development, improvement or use of any of JP3's products be subject to any limitation or restriction. All Confidential Information shall remain the property of the disclosing Party.

**6. Limitation of Liability; Actions.**

(a) IN NO EVENT SHALL JP3 BE LIABLE UNDER THIS AGREEMENT TO THE CUSTOMER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOST BUSINESS OPPORTUNITIES, DAMAGE TO GOOD WILL OR REPUTATION, AND COSTS OF COVER, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. JP3'S ENTIRE AGGREGATE LIABILITY FOR ANY CLAIMS RELATING TO THE SERVICES OR THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR PAYABLE BY THE CUSTOMER TO THE JP3 UNDER THIS AGREEMENT IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. THIS SECTION SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.

(b) NO ACTION SHALL BE BROUGHT FOR ANY CLAIM RELATING TO OR ARISING OUT OF THIS AGREEMENT MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION, EXCEPT FOR MONEY DUE ON AN OPEN ACCOUNT.

**7. Force Majeure.** JP3 shall not be liable hereunder for any failure or delay in the performance of its obligations under this Agreement if such failure or delay is on account of causes beyond its reasonable control, including civil commotion, war, fires, floods, accidents, earthquakes, inclement weather, telecommunications line failures, electrical outages, network failures, governmental regulations or controls, casualty, strikes or labor disputes, terrorism, acts of God, pandemics, epidemics, local disease outbreaks, scarcity or rationing of gasoline or other fuel or vital products, inability to obtain materials or labor, in addition to any and all events, regardless of their dissimilarity to the foregoing, deemed to render performance of the Agreement impracticable or impossible under the law, in which event the JP3 shall be excused from its obligations for the period of the delay and for a reasonable time thereafter.

**8. Term.** The Term of this Agreement shall commence on the date set forth in the SOW. Thereafter, the term of this Agreement shall remain in place until termination of the last existing SOW in place between the Parties, or unless otherwise terminated by either Party pursuant to Section 9 of the Agreement. SOW will automatically renew for one year at the anniversary date of the initial SOW. Termination by either party requires written notice of termination 90 days prior to the renewal anniversary date.

**9. Termination for Breach.** Either Party may terminate this Agreement at any time in the event of a breach by the other Party of a material covenant, commitment or obligation under this Agreement that remains uncured for fifteen (15) days following written notice thereof. Such termination shall be effective immediately and automatically upon the expiration of the applicable notice period, without further notice or action by either Party. Termination shall be in addition to any other remedies that may be available to the non-breaching Party.

**10. Governing Law and Venue.**

(a) This Agreement will be governed by and interpreted in accordance with the laws of the State of Texas, without giving effect to the principles of conflicts of law of such state. The Parties hereby agree that any action arising out of this Agreement will be brought solely in any state or

federal court located in Harris County, Texas. Both Parties hereby submit to the exclusive jurisdiction and venue of any such court.

(b) **Collection Expenses.** If JP3 incurs any costs, expenses, or fees, including reasonable attorney's fees and professional collection services fees, in connection with the collection or payment of any amounts due it under this Agreement, Customer agrees to reimburse JP3 for all such costs, expenses and fees.

**11. Amendments; Waivers.** This Agreement may not be modified or amended except by a written instrument signed by the parties. In addition, no waiver of any provision of this Agreement will be binding unless set forth in a writing signed by the party granting the waiver. Any waiver will be limited to the circumstance or event specifically referenced in the written waiver document and will not be deemed a waiver of any other term of this Agreement or of the same circumstance or event upon any recurrence thereof.

**12. Notices.** Any notice required or permitted to be given under this Agreement will be in writing and be deemed given when delivered by hand or received by registered or certified mail, postage prepaid, or by nationally recognized overnight courier service, addressed to the party to receive such notice at the following address or any other address substituted therefor by notice pursuant to these provisions:

If to JP3:

JP3 Measurement, LLC

Attn: General Counsel

8846 N. Sam Houston Parkway W.

Houston, Texas 77064

If to Customer:

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13. **Survival.** The provisions of Sections 9 to 18 hereof, and all other terms and conditions of this Agreement and the SOW which by their nature are intended to survive, will survive the expiration or termination of this Agreement, and the SOW for any reason.

14. **Compliance with Laws.** Both parties agree, at their own expense, to operate in full compliance with all governmental laws, regulations, and requirements applicable to the duties conducted hereunder. Each party will obtain and maintain in force, at its own expense, all licenses, permits and approvals required for its performance under this Agreement and will obtain all required inspections, authorizations and approvals prior to commencement of the Support Services.

15. **Enforcement.** If any party will institute legal action to enforce or interpret the terms and conditions of this Agreement or to collect any monies under it, venue for any such action will be Harris County, Texas. Each party irrevocably consents to the jurisdiction of the courts located in the State of Texas for all suits or actions arising out of this Agreement. Each party hereto waives to the fullest extent possible, the defense of an inconvenient forum, and each agrees that a final judgment in any action will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

16. **Waiver of Jury Trial.** EACH OF THE UNDERSIGNED DO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR WITH RESPECT TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR RELATING OR INCIDENTAL HERETO.

17. **Severability.** Each provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the legality or validity of the remainder of the Agreement.

18. **Entire Agreement; Modification; Waiver.** This Agreement, and any exhibits attached hereto, is the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreement or communications between the Parties, whether written, oral, electronic or otherwise. No change, modification, amendment, or addition of or to this Agreement or any part thereof shall be valid unless in writing and signed by authorized

representatives of the Parties. No waiver of any term or right in this Agreement shall be effective unless in writing, signed by an authorized representative of the waiving Party.

In witness whereof, the Parties hereto have executed this Services Agreement on the date set forth below.

**JP3 Measurement, LLC**

By: \_\_\_\_\_

Name:

Title:

Date:

**CUSTOMER**

By: \_\_\_\_\_

Name:

Title:

Date: