

## Softdocs Master Services Agreement - Texas DIR Contract DIR-CPO-5236

This Softdocs Master Services Agreement (this "Agreement") is entered into by [REDACTED] ("Client") and Softdocs SC, LLC ("Softdocs") on [REDACTED] (the "Effective Date") and sets forth the terms and conditions that govern your access to and use of Our Solutions. These terms are secondary in the order of precedence to Contract DIR-CPO-5236 between Softdocs and the Texas DIR. Each party agrees as follows:

### 1. Ordering Procedures

Subject to Client's compliance with the terms set forth herein, Softdocs will provide Client access to Our Solutions and deliver the Services detailed in the applicable Order. This Agreement, the Order, and any attachments or exhibits thereto, which may include statements of work for Services (each an "SOW"), constitute the complete and entire agreement, and supersede all other agreements between Softdocs and Client concerning such subject matter. In the event of any conflict in terms, an Order, or an SOW, the following order of precedence shall apply: (1) Order; (2) this Agreement; (3) SOW.

### 2. Access and Use Rights

- a. **Access and Renewals.** Employees of Client may access and use Subscriptions and the Documentation for Client's internal business purposes only during the term set forth on the Order. Unless Client notifies Softdocs in writing of Client's desire to cancel at least forty-five (45) days prior to the start of the upcoming renewal term, the Subscription shall renew for consecutive one (1) year terms after the initial term. Renewal fees or Subscription pricing for renewal terms are subject to an annual adjustment unless agreed to otherwise in writing at least forty-five (45) days prior to the start of the upcoming renewal term.
- b. **Suspension.** Softdocs may suspend access to any Solution upon written notice if Client fails to pay fees when due or violates this Agreement. Suspensions are rare and exercised in a manner proportionate to the severity of the violation. Softdocs agrees to work with Client in good faith to address any violations in a reasonable manner, to prevent similar violations, and to reinstate the affected Solutions as quickly as possible.

### 3. Fees, Expenses, and Payment

- a. **Fees, Duties, and Taxes.** Fees for Solutions are set forth in the applicable Order, exclusive of taxes. Client will be responsible for all applicable taxes. If Client is tax-exempt, Client must provide Softdocs with written evidence of such tax exemption prior to any invoicing.
- b. **Expenses.** If Softdocs incurs reasonable travel and living expenses to perform the Services in the Order, Client is required to reimburse Softdocs for such expenses.
- c. **Invoices.** Invoices shall be paid in accordance with the applicable Order. The initial invoice for the Solutions is issued immediately following an Order signature. All other invoices shall be issued as follows: (i) invoices for Services will be issued in accordance with the applicable SOW; (ii) pro forma invoices for upcoming Subscription renewals shall be sent to Client at least forty-five (45) days prior to the start of the renewal term; (iii) and unless terminated in compliance with the Agreement, renewal invoices for Subscriptions will be issued at least thirty (30) days prior to the start of the renewal term.
- d. **Payments and Late Payments.** Payment is due as stated on the Order. All payments are non-refundable except for breach of this Agreement by Softdocs. If Client believes an invoice is inaccurate, Client must notify Softdocs in writing within ten (10) days from the date of such invoice. Except for amounts subject to a good faith dispute, Softdocs may invoice an interest rate at eighteen percent (18%) per year, or the maximum amount allowable under applicable laws, for any outstanding invoice not paid when due.

### 4. Confidential Information

- a. **Definitions.** “Confidential Information” means (i) all information disclosed by Client or Softdocs (“Discloser”) to the other (“Recipient”) electronically, visually, orally or in a tangible form which is either (a) marked as “confidential” (or with a similar legend), (b) is identified at the time of disclosure as being confidential, or (c) should be reasonably understood to be confidential or proprietary, regardless as to whether marked as such; (ii) the terms of this Agreement, Our architecture, software, data, and technology that comprise the Solutions, Order(s), SOW(s), and any proposals or other documents that preceded this Agreement; and (iii) donor, prospect and financial information. Recipient shall not obtain any rights, title, or interest in any Confidential Information of Discloser. Information generally known to the public, independently developed by Recipient without access to Confidential Information, in the possession of Recipient without an obligation of confidentiality, or information required to be disclosed by court order or applicable law after Discloser has been notified shall not be considered Confidential Information if Recipient can provide sufficient evidence of the foregoing.
- b. **Treatment of Confidential Information.** Recipient shall only (i) use Discloser’s Confidential Information to carry out the purposes of this Agreement; and (ii) disclose Discloser’s Confidential Information to those third parties operating under non-disclosure provisions no less restrictive than those set forth in this Agreement and who have a justified business “need to know.” Recipient shall be responsible for any mistreatment of Confidential Information by such third parties. Recipient shall protect Discloser’s Confidential Information using the same degree of care it uses to protect its own confidential and proprietary information, but in any case, not less than reasonable care, and shall protect such information in accordance with applicable laws. Upon termination of this Agreement, Recipient shall return or destroy all Discloser Confidential Information in its possession or control, if feasible. If not destroyed, Recipient shall continue to protect such information as required above.

## 5. Security

- a. Client and Softdocs agree that it takes both parties to protect the Client’s Data and Softdocs’ Solutions. Softdocs has implemented and will maintain administrative, physical, and technical safeguards designed to: (i) protect against anticipated threats or hazards to the security of Client’s Confidential Information, and (ii) protect against unauthorized access to or use of Confidential Information that could materially cause harm to Client. Softdocs’ technical safeguards include firewalls, virus and intrusion detection, and authentication protocols. In order to continually improve these safeguards, Client reserves the right to make changes to the physical and technical safeguards at any time, and creation or changes to all policies and data security programs that may be affected, provided, Softdocs will at all times maintain commercially reasonable database security procedures and standards. Client and Softdocs acknowledge that Solutions may include sending email and publishing web pages over the public Internet using SMTP or HTTP protocols, and that these standard protocols do not support many enhanced data security protections. In no case will the use of the public Internet in this manner be deemed to violate Softdocs’ obligations under this Agreement. Client commits to take commercially reasonable security precautions to prevent unauthorized or fraudulent use of Solutions that Client has access to. Upon request, Softdocs may provide Client with additional information about Our security standards. Client shall take reasonable security precautions to prevent unauthorized use of the Solutions and Client’s Data.
- b. **Client Obligations.** Solutions may only be used or accessed from devices and systems of the Client that meet the System Requirements. Client shall administer and monitor the use of all login IDs, passwords, and all accesses to the Solutions by Client’s employees pursuant to the guidelines Client will receive when Solutions are activated. Client further acknowledge and agrees that the Solutions are limited to only those licensed departments as expressly set forth on the applicable Order and any use beyond the expressly licensed departments shall constitute a material breach of this Agreement, which may result in immediate termination by Softdocs or an invoice commensurate to the expanded usage by Client.

## 6. Indemnity

Each party shall indemnify and defend the other party against any third-party claims arising from the indemnifying party’s gross negligence or willful misconduct. Client shall indemnify and defend Softdocs against any third-party claims in the case of breach of this agreement by Client or obligations of Client. The indemnified party shall give the indemnifying party prompt written notice of any claims for indemnification and the indemnified party agrees to relinquish control of defending any such claim to the indemnifying party, including the right to settle; provided however, that the indemnifying party will not settle any such suit or claim without the

indemnified party's prior written consent if such settlement would be adverse to the indemnified party's interests. This section states the entire liability of each party with respect to any type of third-party claim.

## 7. Representations, Warranties, and Disclaimer

- a. **Mutual Representations and Warranties.** Each party represents and warrants that (i) it has the right and power to enter into this Agreement, (ii) an authorized representative has accepted this Agreement, and (iii) it will comply with all applicable laws and regulations pertaining to this Agreement.
- b. **Softdocs Limited Warranties.** Solutions will materially perform pursuant to their then-current Documentation. All Services will be performed in a professional manner in accordance with industry standards. If Client believes that a Solution fails to perform as described in the Documentation, Client must notify Softdocs in writing within thirty (30) days of the occurrence of the problem, and Softdocs will use reasonable efforts to repair or replace the Solution without charge. If a Service has been improperly performed, Client must notify Softdocs in writing within thirty (30) days of the occurrence of the problem, and Softdocs will reperform the Service without charge. The foregoing provides Client with the sole remedy for Solutions or Services that do not comply with the foregoing promise.
- c. **Disclaimer.** EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 9, SOFTDOCS EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY (BY ANY TERRITORY OR JURISDICTION) TO THE EXTENT PERMITTED BY LAW, AND FURTHER Softdocs EXPRESSLY EXCLUDES ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY.

## 8. Limitation of Liability

TO THE FULLEST EXTENT PERMITTED BY LAW, AND EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 8 AND CLIENT'S PAYMENT OBLIGATIONS, EACH PARTY'S MAXIMUM LIABILITY TO THE OTHER PARTY FOR ANY ACTION ARISING UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION AND WHETHER IN TORT OR CONTRACT, SHALL BE LIMITED TO THE GREATER OF (X) \$25,000 OR (Y) THE AMOUNT OF FEES PAID OR PAYABLE BY CLIENT FOR THE SOLUTION FROM WHICH THE CLAIM AROSE DURING THE SIX (6) MONTHS PRECEDING THE CLAIM. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLIENT AND SOFTDOCS AGREE TO THE ALLOCATION OF RISK SET FORTH HEREIN. SOFTDOCS' TOTAL, AGGREGATE LIABILITY FOR ITS INDEMNIFICATION AS SET FORTH HEREIN SHALL NOT EXCEED FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00 USD).

## 9. Ownership

- a. **Ownership and License.** Client owns Client's data, Client's Confidential Information and any artwork, logos, trade names, and trademarks that Client provides to Softdocs ("Client Data"). In order for Softdocs to provide the Solutions, Client assigns to Softdocs and its suppliers all rights to use, reproduce, store, modify, and display Client Data. Softdocs may aggregate benchmarking results of Client's use of Solutions with results of other customers' use and use and disclose such results for business or commercial purposes provided Softdocs does not individually identify Client, identifiable Confidential Information, or Client's individual use of Solutions (the "Aggregated Data"). Softdocs will own all such Aggregated Data.
- b. **Softdocs Ownership and License.** Subject to Client's rights to Client Data set forth above, Softdocs has all right, title, and interest in and to any expressions and results of Solutions, the work, findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, tools, applications, interfaces, enhancements, other technical information, and all derivatives of the foregoing created in connection with this Agreement ("Work Product"). Softdocs grants to Client a nonexclusive, fully paid-up license to use Work Product, solely to the extent necessary for Client's end users to use Solutions in accordance with this Agreement. If Client provide any feedback, comments, suggestions, ideas, requests, or recommendations for modifications or improvements to Softdocs, Client hereby assigns all right, title, and interest in any such feedback to Softdocs to be used for any

appropriate business or commercial purpose. All rights not expressly granted to Client hereunder are reserved by Softdocs.

#### **10. Notice**

All notices or other communications sent pursuant to or in connection with this Agreement shall be made in writing and sent to the applicable address set forth on the Order, or as designated from time to time in writing in accordance with this Section 10. All notices shall be deemed given if delivered receipt confirmed using email or facsimile transmission, registered or certified first class mail, postage prepaid, or recognized courier delivery.

#### **11. Publicity**

Client acknowledges and agrees and hereby grant to Softdocs the right to use the Client's name, logo and/or trademark(s) for Softdocs' marketing materials, customer lists, website testimonials, publications and/or as a referral. Softdocs may display Client's name, logo and/or trademark(s) on Softdocs' website and/or any other marketing materials in its sole discretion.

#### **12. Force Majeure**

Neither Client nor Softdocs shall be liable for any failure to perform its obligations under this Agreement if prevented from doing so by a cause(s) beyond its reasonable control.

#### **13. Dispute Resolution; Governing Law**

Unresolved disputes shall be submitted to and resolved exclusively by arbitration conducted in accordance with American Arbitration Association rules, with one (1) arbitrator appointed to conduct arbitration and arbitration taking place in a mutually agreed location, or the State of South Carolina, if the parties cannot agree otherwise within thirty (30) days of an initial filing. Any decision in arbitration shall be final and binding upon Us. In addition to the above, either party may sue or seek injunctive relief in any court for infringement of its proprietary or intellectual property rights. Softdocs may sue in any court to collect unpaid amounts. CLIENT AND Softdocs EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING ARISING UNDER OR RELATED TO THIS AGREEMENT. This Agreement shall be governed by the laws of the State of South Carolina, excluding choice of law principles. Applicable laws may limit the terms and conditions of this Agreement for public educational or government institutions, and in such cases, the terms and conditions shall apply to the fullest extent allowed.

#### **14. Term and Termination**

- a. **Term.** The term of this Agreement commences on the Effective Date and remains in effect for as long as there is an Order Form in effect.
- b. **Default.** Either party may terminate this Agreement if the other party materially defaults in performing its obligations under this Agreement and the default remains uncured for at least thirty (30) days following receipt of written notice from the party requesting termination, and immediately by Softdocs upon written notice for Client's failure to pay undisputed invoices when due. In addition, this Agreement may be terminated by Softdocs upon written notice and the making of an assignment for the benefit of creditors by Client or the dissolution of Client's entity.
- c. **Effect of Termination.** Upon termination of this Agreement or termination of a Solution, Softdocs may immediately cease providing the terminated Solution(s). Subject to Softdocs' then-current rates, Softdocs will provide a copy of Client's Data in a mutually agreed upon format to the extent Softdocs has Client's Data in its possession upon termination. If Softdocs has archive copies of Client's Data created during the course of performing its obligations under this Agreement, Client agree that Softdocs may retain such copies following termination subject to Softdocs' internal practices for record destruction. All earned and unpaid fees and expenses are due upon termination.

**15. General**

Except as specifically stated herein, remedies are cumulative. No failure or delay in enforcing any term or exercising any option shall be construed as a waiver unless agreed to in writing by Us. If any provision of this Agreement is held to be unenforceable, the other provisions shall remain in full force and effect. No purchase order, RFP response, marketing materials, or other ordering document that purports to modify or supplement the printed text of this Agreement or any attached or referenced document shall add to or vary the terms of this Agreement. All proposed modifications to this Agreement, Order(s) or SOW(s) are objected to and deemed material unless otherwise mutually agreed to in writing. Orders may be executed electronically, and in counterparts, which together form one legal instrument. If any provision of this Agreement is held to be invalid, excessive, illegal or unenforceable by a court of competent jurisdiction, such provision shall be stricken in its entirety and the remainder of this Agreement shall remain in full force and effect. A copy of an executed Order and any purchases within a Solution and made by reliable means, including but not limited to electronic acceptance, shall be considered an original. Client may not assign Client’s rights or obligations under this Agreement without Our written consent. Softdocs performs its obligations under this Agreement as an independent contractor, not as Client’s employee, partnership, or agent. Sections 3(b), 4, 5, 8 – 17 survive the termination of this Agreement. Client has accepted this Agreement by the signing of an Order by a duly authorized officer or officer representative of the Client.

**17. Definitions**

- “Documentation” applicable manuals and documentation that Softdocs generally provides or makes available for Solutions.
- “Order” and “Order Form” mean the Softdocs order form signed by You (electronically or otherwise) and accepted by Softdocs setting forth the Solutions You have ordered.
- “Services” means services provided by Softdocs other than Subscriptions that are pursuant to an Order (and SOW if applicable) and may include professional, consulting, or training services.
- “Softdocs”, “Our”, and “We” mean Softdocs SC, LLC and its affiliates and subsidiaries.
- “Solution” means Subscriptions and Services collectively.
- “Subscription” means any Softdocs subscriptions, including maintenance, support, application services and payment services provided by Softdocs pursuant to an Order.
- “System Requirements” means the requirements located in the portal, as updated from time to time by Softdocs.

**Agreement Signatures**



**SOFTDOCS SC, LLC**

**Signature:**

**Signature:**

**Name:**

**Name:**

**Title:**

**Title:**

**Date:**

**Date:**