



# Master Services Agreement

**This Master Services Agreement** constitutes an integral part of the agreement between DataSync and Client. Each reference in this Master Service Agreement to information set forth in a Contract Document shall be construed to incorporate all of the information to which reference is made. Any conflict between this Master Services Agreement and the information set forth in a Contract Document shall be resolved in favor of the provisions of this Master Services Agreement.

DataSync reserves the right from time to time and in its sole discretion to revise this Master Services Agreement and shall provide Client with notice of such changes by email in accordance with the provisions of Section 8.2, below. Pursuant to Section 5.1, Client may terminate this Agreement if such changes are not acceptable.

**Structure of Agreement.** This Master Services Agreement provides a legal and operating framework for individual software engineering and consulting Projects that may be entered into by Client and DataSync. The specific terms of any transaction will be contained in a separate Preliminary Proposal (also called a Proposal or a Solutions Proposal), a Project Charter, a Project Requirements Document and any related Change Requests (referred to as the Contract Documents). The Contract Documents incorporate the terms of this Agreement by reference. Nothing in this Agreement obligates any Party to enter into any particular Project Document.

A Project is commenced by the agreement of Client to a Proposal. A Proposal may provide that specified work (such as the ordering of software subscriptions or licenses and/or the conduct of preliminary due diligence and analysis) may be executed directly as preliminary steps towards the preparation of a more detailed Project Charter and Project Requirements Document with its accompanying Technical Specifications for a Project. The Project Charter and a Project Requirements Document supersedes the Proposal with respect to these details. A Project Requirements Document can be subsequently supplemented and amended by a Change Request signed by the Parties. All Proposals, Project Requirements Documents, Technical Specifications and Change Requests are incorporated into this Agreement under Section 8.11, below. By way of clarification, the order of controlling precedence with respect to any particular item within these documents is as follows:

1. Change Request
2. Technical Specifications
3. Project Requirements Document
4. Proposal
5. This Master Services Agreement

**1. Definitions.** As used in this Agreement, the following terms shall have the definitions set forth in this Section 1:

**“Agreement”** shall mean one or more Contract Documents and this Master Services Agreement together with any other documents incorporated by reference under Section 8.11.

**“Change Request”** means a change to a Proposal requirement or a change to a Project Requirements Document prepared by DataSync and mutually agreed upon by the Parties.

**“Confidential Information”** means any information disclosed by a Party (the **“Disclosing Party”**) to the other (the **“Receiving Party”**) pursuant to this Agreement which is in written, graphic, machine readable or other tangible form and is marked "Confidential," "Proprietary" or in some other manner to indicate its confidential nature. Confidential Information may also include oral information

disclosed by a Party to the other pursuant to this Agreement, provided that such information is designated as confidential at the time of disclosure or is so designated in writing by the Disclosing Party within thirty (30) days after its oral disclosure. In the absence of such designation, Confidential Information will include information that the Receiving Party has a reasonable basis to believe is confidential based upon the nature of the information disclosed and circumstances of disclosure. Confidential Information shall not mean the information excluded by Section 6.2 below. Confidential Information shall include Client Data, if any, disclosed to DataSync, which shall be deemed to be marked as confidential. In addition, this Agreement, its contents, and any attachments, amendments or other incorporated documents and any and all information relating to the evaluation or demonstration of Third Party Software products, shall be considered and treated as Confidential Information.



**“Contract Document”** means a document agreed upon between DataSync and Client that incorporates this Agreement by reference. Examples include, but are not limited to, Quotes, Proposals, Project Charter, Project Requirements Documents, Statements of Work, Technical Specifications, Project Meeting Minutes and Change Requests.

**“Client”** means the Client identified in a Contract Document.

**“Client Data”** or **“Data”** means facts and values belonging to the Client concerning objects and events that could be recorded and stored in an application or database. Examples include but are not limited to names, addresses, dollar amounts, statuses, and the like. Client Data or Data does not include Metadata.

**“Deliverables”** means software code in object or scripted code format relating to a Project, if any, developed by DataSync pursuant to Section 2.3. Unless otherwise set forth in this Agreement or agreed by the Parties, all code to be delivered to Client will be transmitted by DataSync to Client electronically in accordance with such security measures as may be mutually agreed by the Parties.

**“Documentation”** means all documentation provided by DataSync to Client with respect to any Deliverable, including but not limited to manuals and other training and technical materials.

**“Effective Date”** means the date that DataSync signs the Quote, Proposal, Project Requirements Document or Change Request, as the case may be.

**“Estimate(s)”** means an approximation or judgment of the tasks and work to be performed for any Service and the time and/or costs associated with individual or groups of tasks, responsibilities or work to be performed based on the best available information at the time. Estimates are not binding or conclusive and will be impacted by the discovery and identification of new information, issues, requirements and technical problems as a Project progresses. Time and cost Estimates are not to be considered as contractually binding minimums, maximums or fixed time or costs. Estimates are sometimes referred to in the aggregate as a “Budget” or “Budgets” but, again, are not minimums, maximums, fixed or binding limitations on DataSync. All work performed by DataSync under this Agreement is performed and will be billed to Client on a time and materials basis based on actual expenses incurred and time spent on a Project.

**“Metadata”** means information that describes the properties or characteristics of Client Data and the context of those Data. Examples include but are not limited to field names (also known as attribute names or column headers), field data types, field sizes, field relationships and dependencies, required field settings, calculated field

algorithms, record composition, Data table names and keys, report and Data view models, and Data models (also known as Data Schemas: graphical systems that illustrate the nature and relationships among Data).

**“Party”** or **“Parties”**. DataSync, Client and a Third Party Software vendor, as the situation requires, are sometimes separately referred to herein as a Party and collectively as the Parties.

**“Proposal”, “Preliminary Proposal”, or “Solution Proposal”** are all alternative ways of referring to an initial high level summary of the Services proposed to be provided by DataSync. A Proposal may provide initial Estimates of tasks, times and costs. A Proposal signed by Client and accepted by DataSync together with this Master Services Agreement becomes a binding legal agreement between Client and DataSync. Proposals and/or portions of Proposals are frequently replaced and superseded by the provisions of one or more subsequent Contract Documents.

**“Project”** means a specific set of tasks and deliverables, all as described in a set of Contract Documents.

**“Project Charter”** means the document prepared by DataSync describing how a Project is to be managed and performed. A Project Charter frequently allocates and assigns responsibilities between and among the Parties.

**“Project Manager”** means the Project Manager appointed by a Party under Section 2.3.2.1 for a Project. Project Managers are specifically authorized and empowered to sign Contract Documents and otherwise conclusively bind a Party to changes in a Project.

**“Project Minutes”** or **“Minutes”** means a written summary of a meeting or discussion between Party personnel prepared by DataSync and sent to the meeting participants outlining the items discussed, the assignment of responsibilities with respect to the items, and the potential impact of the items discussed on Project scope, cost estimates and timelines. Because DataSync relies on the accuracy of all Project Minutes, Clients are specifically obligated to promptly review all Project Minutes and report any discrepancies or errors to the DataSync Project Manager. Project Minutes are deemed complete and accurate and may be relied upon by DataSync as such on the fourth business day following the date the Minutes are distributed.

**“Project Plan”** means a work breakdown schedule of specific tasks to be performed in a Project showing the tasks, the interdependencies between the tasks, and an Estimate of time required for the completion of the tasks.

**“Project Requirements Document”** refers to one of more documents prepared by DataSync that summarize the business and functional requirements for a Project, together with any related Change Requests. For certain

small Projects, Project Requirements Document may be contained in the body of a Proposal provided, however, that one or more separate subsequent Project Requirements Documents may, at DataSync's discretion, be prepared to supersede and replace all or a portion of the information set forth in a Proposal. A Project Requirements document may include updated Estimates of the number of hours required to complete certain tasks and information relating to the schedule for task completion, all of which would supersede any prior information. All Project Requirements Documents signed or otherwise agreed to by the Parties shall automatically become an addendum to this Agreement and are incorporated herein by this reference. While prepared by DataSync, the accuracy and completeness of all user groups and teams, business processes, business rules, and Project requirements are the responsibility of the Client.

**"Project Solution Plan"** or **"PSP"** is a term no longer used by DataSync. It used to have the same meaning as a Project Requirements Document.

**"Quote"** is a reference to an outdated form of Contract Document that is no longer used by DataSync. Quote meant the initial Client agreement document created by DataSync that contained Client specific identification information, an initial list of Services to be performed, and other information specific to the Client's needs. When signed by Client and accepted by DataSync, a Quote became a binding legal agreement between Client and DataSync. Quotes are no longer used.

**"Retainer"** or **"Retainer Amount"** means the retainer amount, if any, specified in a Quote or Proposal and as may be modified from time to time by the Parties in a Contract Document.

**"Services"** means the activities, if any, to be undertaken by DataSync pursuant to a Contract Document and described in Section 2 of this Agreement including, but not limited to, software licensing and subscription management; software analysis, design, engineering, architecture, modification and coding; software testing; software maintenance; software project services; and business process advisory work.

**"Service Rate"** means the hourly rate specified in a Contract Document for any specific Project or Projects or if no rate is so specified, **\$195.00** per hour, all as adjusted from time to time under the provisions of Section 4.1.2.

**"Software"** means any Deliverable that consists of software object and/or scripting code developed by DataSync for Client under the terms of this Agreement.

**"Software Bugs"** or **"Bugs"** means a documented and re-creatable result from the operation of software occurring within six (6) months after Client's final acceptance that (i) causes the software to fail to perform in conformance with an express, documented requirement in a Contract

Document and (ii) that materially impairs the operation of the software. A Software Bug or Bug does not include incorrect or unexpected results caused by:

- Client personnel user errors, including user errors due to lack of, or inadequate, training.
- The inability of the Client to accurately and completely specify its user groups and teams, business processes, business rules and requirements prior to DataSync's development or configuration work.
- A change in desired performance, output, or design by Client regarding a delivered, functioning requirement.
- Conflicting requirements approved by Client.
- Inadequate or incomplete acceptance testing by Client which, if properly performed, would have revealed the incorrect or unexpected result during the development and testing process.
- Changes made to the Software by the Client or an outside Third Party, including changes made by a Third Party Software vendor, in features, functionality, and/or versions. For sake of clarity, this includes Software Bugs within the Third Party Software itself, such as in the SugarCRM or Microsoft Office 365 and/or Dynamics 365 platforms.
- Operation of the Software on infrastructure other than the infrastructure agreed to by the Parties, including alternate Operating Systems (OS) or OS versions, desktop software, and/or browsers.
- Overloading of the Software such as increasing the number of users above that agreed to by the Parties, increasing the number of user access requests, report requests, changing expected reaction times, or increasing the size and/or number of record fields or records.
- The refusal of Client to allow DataSync to discuss system requirements with representatives from all user groups or to otherwise complete the discovery and analysis work.

In all of these exception cases, DataSync will work with Client to adjust the Project scope and time and cost Estimates and revise and/or reconfigure the software to address Client's concerns.

**"Statement of Work"** or **"SOW"** is term no longer used by DataSync. It used to have the same meaning as what is now described as a Project Solution Plan. The terms "Statement

of Work” was discontinued by DataSync because it has too many confusing and conflicting interpretations in standard industry usage.

“**Third Party Software**” shall mean one or more software platforms or packages that are supplied by a third party vendor. Examples include Microsoft, IBM, SugarCRM, Act-On, and other similar software providers.

**2. Services.** Client may enter into one or more Contract Documents requesting DataSync to perform one or more of the following services:

**2.1 Software Subscription & Licensing Services.** If Client specifies in a Contract Document that DataSync shall place orders for software subscriptions or licenses, then the following provisions shall apply with respect to such subscriptions or licenses:

**2.1.1 Software Subscriptions & Licenses.** Client agrees to place all such software subscription or licensing orders for the Third Party Software through DataSync. DataSync will complete the services subscription for the specified number of users and directly bill Client. All subscription or licensing orders must be paid in advance of ordering, and DataSync is not responsible for any consequences related to Client’s delay in payment. Client acknowledges that in undertaking this service, DataSync is reselling the subscription or license and that Client may be required to additionally sign or accept agreements or other documents supplied by the Third Party Software vendor in order to activate their service. DataSync will not be able to begin the subscription until the Third Party Software vendor has processed and completed Client’s service request. In certain cases where the Third Party Software vendor requires a direct agreement with Client, DataSync will so inform Client and assist Client in placing and completing the order. In all cases, Client agrees to designate and maintain DataSync as Client’s direct or referral agent or reseller. ***All initial subscriptions and licenses, and their renewals, are noncancellable except as provided by Section 2.1.6, below.***

**2.1.2 Third Party Software Restrictions.** Unless otherwise specifically agreed specified between Client and any Third Party Software provider, the following restrictions and provisions shall apply to all Third Party Software. In the case of conflicts between this Agreement and any agreements directly between the Client and Third Party software vendors, the provisions of the direct agreement shall supersede and apply with respect to the Third Party Software provider.

**2.1.2.1 Title.** Title to, and all intellectual property rights associated with, the Third Party Software shall remain with the Third Party Software vendor, subject only to the licensing or subscription rights granted to Client.

**2.1.2.2 Software Use.** All Third Party Software shall be used for Client’s internal business purposes only

and shall be installed only on equipment and other hardware authorized by the Third Party Software vendor. Client agrees to maintain a complete list of all authorized users and to allow the Third Party Software vendor to audit such lists. Client is solely responsible for confidentiality of all authentication credentials associated with the access to any license or subscription. Client shall not, directly or indirectly:

(i) license, resell, rent, lease, distribute, market, commercialize or otherwise transfer rights or usage to: (a) the Third Party Software, (b) any modified version or derivative work of the Third Party Software, or (c) any Third Party Software, either modified or not, for any purpose including timesharing or service bureau purposes;

(ii) remove or alter any title, copyright, trademark or other proprietary notices in or on the Third Party Software;

(iii) transfer, use or export the Third Party Software in violation of any laws or regulations of any government or governmental agency, including all export or import laws and regulations;

(iv) reverse engineer, decompile or modify any encrypted or encoded portion of the Third Party Software;

(v) remove or modify any portions of the Third Party Software implementing license or subscription keys or other forms of end user verification;

(vi) publish the results of any benchmark tests run on the Third Party Software; or

(vi) operate or modify any open source version of the Third Party Software source code (“Original Code”) to develop a separately maintained source code program (the “Forked Software”) so that such modifications are not automatically integrated with the Original Code or so that the Forked Software has features not present in the Original Code.

**2.1.2.3 Copy Restrictions.** Third Party Software may not be copied or transferred except for (i) the temporary transfer in the event of a hardware malfunction or (2) the maintenance of backup or archival copies. All such copies shall maintain and duplicate all titles, trademarks, copyrights and other restricted rights notices.

**2.1.3 SugarCRM Subscriptions.** In addition to the terms and conditions of this Agreement, all SugarCRM subscriptions are subject to the terms and conditions of the SugarCRM Master Subscription Agreement. By signing this Agreement, Client agrees to these terms and conditions.

**2.1.4 Microsoft Licenses and Subscriptions.** In addition to the terms and conditions of this Agreement, all Microsoft licenses and subscriptions are subject to Online Services Terms of Microsoft. By signing this Agreement, Client agrees to these additional terms and conditions.

**2.1.5 Third Party Software Modifications.** It is the inherent nature of the software industry that software services, subscriptions and licenses are subject to change, modification and improvement. Client acknowledges and understands that software subscribed or licensed by DataSync for Client from Third Party Software providers may, at the providers' sole discretion, the provider may discontinue, retire, change, or modify their software in ways that might make the Services provided by DataSync, including any Software or modifications developed by DataSync for Client, cease to function. DataSync is not liable in any way for such actions and such actions will not entitle Client to any refund, credit or other compensation from DataSync. Client and DataSync may enter into a Contract Document to modify the software to accommodate these Third Party Software vendor changes, but there is no guarantee that DataSync will be able to do so. Further, Client is responsible for all costs and expenses incurred by DataSync in performing such work.

**2.1.6 Software Subscription Management Services.** All Third Party Software licenses or subscriptions are for a term of one (1) year and will automatically renew for successive terms of one (1) year unless Client notifies DataSync of its intent not to renew prior to thirty (30) days prior to the end of the preceding term. DataSync agrees to track and manage the subscription renewal process for the Third Party Software and bill Client at the appropriate renewal rates specified by the Third Party Software vendor. Client acknowledges that it may be required to additionally sign or accept agreements or other documents supplied by the Third Party Software vendor in order to renew their service. DataSync may not be able to renew the service until the Third Party Software vendor has processed and completed the renewal request. All subscription or license renewals must be paid in advance by Client. Client's failure to timely sign Third Party Software renewal documentation or pay the renewal fees may result in the loss of the use of the Third Party Software and/or loss of Client Data. DataSync shall have no liability for such losses.

**2.2. Advisory Services.** From time to time and at the request of Client in a Contract Document, DataSync's technical personnel will review and discuss with Client its business needs and processes and make suggestions on how DataSync might assist Client in the development of a particular Project or on how various Third Party Software solutions might be configured or modified to meet those needs. Client acknowledges that there may be multiple ways to meet its needs and that no one way may completely match its needs. All configuration decisions will be made by Client and to the extent Client desires DataSync's assistance in implementing these changes, the Parties will either

initiate a new Project under Section 2.3 or prepare a Change Request to an existing Project.

**2.3. Software Project Services.** From time to time during the course of this Agreement, the Parties may agree in a Contract Document to the specifics of one or more Projects. Notwithstanding any other provision of this Agreement, neither Party is under any obligation to agree to any Project and may do so or refuse to do so in its sole and absolute discretion. However, once agreed to, a Project and its related Contract Documents will become a binding obligation of the Parties in accordance with its terms and the terms set forth in this Agreement.

**2.3.1 Project Solution Plan.** Each Project shall be defined by its associated Contract Documents. Each Contract Document shall be prepared by DataSync based on discussions with Client and is subject to acceptance and agreement by Client. The Contract Documents shall contain the tasks, responsibilities and deliverables to be assumed and performed by the Parties with respect to any given Project and any other agreement or requirements relating to the Project, all as mutually agreed to by the Parties.

**2.3.1.1 Time & Cost Estimates.** A Contract Document may contain Estimates of the time and costs associated with individual or groups of tasks, responsibilities or work to be performed by a Party. Such Estimates are based on the best available information at the time, but are not binding or conclusive and will be impacted by the discovery and identification of new information, issues, requirements and technical problems as a Project progresses. If either Party is aware or becomes aware of an issue that will impact a time or cost Estimate, it will use its commercially reasonable best efforts to promptly inform the other. The Parties will then work together in good faith to prepare and agree to an appropriate Change Request reflecting the new information. Time and cost Estimates provided by the Parties are not to be considered as contractually binding minimums, maximums or fixed prices unless a Contract Document specifically provides otherwise. All work performed by DataSync under this Agreement is performed for and will be billed to Client, on a time and materials basis.

**2.3.1.2 Change Requests.** The Parties may, by mutual agreement, make changes or additions to a Project. The Parties shall discuss the nature and details of such changes and DataSync shall prepare a written Change Request reflecting these discussions. In no event shall a Change Request be effective or acted upon in any way until such time as an authorized representative of each Party has agreed to the terms of the Change Request in writing.

### **2.3.2 Project Management.**

**2.3.2.1 Project Managers.** Each Party shall appoint an individual to act as its Project Manager for a specific Project, which appointment shall be specified in



the Contract Document for the Project. The Project Managers shall serve as the primary representatives between the Parties for the Project and shall be responsible for obtaining and providing the applicable information, data, consents, decisions and approvals required by their Party during the course of the Project. Without limiting the generality of the foregoing provisions, a Parties' Project Managers shall:

- Have overall responsibility for managing and coordinating the performance of the Party he or she represents in a prompt and professional manner;
- By virtue of their appointment as such by a Party, be authorized to act for and on behalf of the Party he or she represents, contractually binding the Party;
- Establish and maintain communications between the Parties relating to the Project;
- Schedule and attend all Project status meetings; and
- Review, approve and sign all Project Contract Documents. the Statement(s) of Work and all related Change Requests.

A Party's Project Manager is responsible for communicating and escalating all issues within the Party's organization for appropriate reviews and approvals. A Project Manager's statements and actions shall be conclusive and binding on the Party he or she represents.

Either Party may change its Project Manager at any time upon written notice to the other and may provide for different Project Managers for different Projects.

**2.3.2.2 Project Plan.** DataSync's Project Manager may prepare a Project Plan for coordinating and managing all the technical activities of DataSync's personnel assigned to the Project. DataSync may allow Client's Project Manager and other specified personnel to view the Project Plan, observe updates and changes to the Project Plan, and communicate with DataSync personnel using the messaging tools incorporated into DataSync's Project Plan software.

**2.3.2.3 Client's Responsibilities.** With respect to any Project, Client is responsible for and agrees to:

- Provide DataSync with accurate and complete user group and team definitions, business process definitions, business rules and requirements for the Project;

- Refrain from making any changes or modifications to the Software or any Third Party Software involved with the Project until DataSync completed its work and Client accepts the work;
- Provide DataSync with access to any software, including Third Party Software, installed on Client's servers subject to all reasonable security safeguards employed by Client;
- Provide DataSync with all Metadata necessary for DataSync to provide the Services and to provide DataSync with all dummy or test data to allow DataSync to conduct testing on Software changes it develops for Client;
- Obtain any necessary consents and take any other actions required by applicable laws, including but not limited to data privacy laws, prior to disclosing any of its Data, Metadata or dummy (test) data or information to DataSync. Client also agrees that with respect to Data that is transferred or hosted outside of the United States, if any, Client is responsible for ensuring that all such Data transmitted outside of the United States adheres to the laws and regulations governing such data;
- Be responsible for the content of any Client Data and database, the selection and implementation of controls on its access and use, backup and recovery and the security of the stored Data. This security will also include any procedures necessary to safeguard the integrity and security of software and data used in the Project from access by unauthorized personnel;
- Be responsible for the identification and interpretation of any applicable laws, regulations, statutes and other business rules that affect its existing application systems, programs, or data to which DataSync will have access during the course of a Project. It is Client's responsibility to ensure the systems, programs, and data meet the requirements of those laws, regulations, statutes and rules;
- Be responsible for performing all acceptance testing as required by Section 2.3.2.4 on live production Data or copies of live production Data.

**2.3.2.4 Project Acceptance.** Upon notice from DataSync, Client agrees to evaluate any changes or modifications made by DataSync and to accept or reject such modifications as soon as practical but in no event later than ten (10) business days after its receipt of DataSync's notice. If Client identifies any problems prior to acceptance, it shall explain in written detail the reason for its rejection within the acceptance period and if DataSync is

then able to validate the problems, then it shall use its commercially reasonable best efforts to correct the problems within a reasonable time period. If the work submitted by DataSync for acceptance forms the basis for ongoing work, DataSync may suspend its performance of such other ongoing work pending acceptance by Client, and such suspension shall automatically extend the deadline for such work. The procedures outlined in this Section 2.3.2.4 shall be repeated until the work is accepted. All such work shall be performed as a normal part of the trial and error process of software development and at the expense of Client. Notwithstanding the foregoing, Client hereby acknowledges and agrees that all problems with any Third Party Software that was not changed or modified by DataSync, are the sole responsibility of the Third Party Software vendor.

**2.4 Technical Support.** DataSync will provide Client with unlimited technical support at the Service Rate. At Client's request, DataSync will assist Client in reporting problems to Third Party Software providers. Client will be billed for all calls made and/or emails or support tickets filed or reviewed for technical support.

**2.5 Project Personnel.** DataSync and Client are each responsible for the supervision, direction, compensation and control of their own employees and subcontractors. Any DataSync employee assigned to a Project will be qualified to perform the duties assigned or fully knowledgeable of the tasks assigned to them. If Client deems that any DataSync employee is unable to perform the duties assigned, Client may request a replacement employee be assigned. Client acknowledges and agrees that DataSync may use its affiliated organizations or other subcontractors to perform all or a portion of the work for any Project and may, in connection with that subcontracting, share Client Confidential Information with such affiliates and subcontractors, subject to the terms of this Agreement. In all cases, DataSync shall be responsible for compliance by its affiliates and subcontractors with the terms and the conditions of this Agreement to the same extent as imposed upon DataSync itself.

**2.6 General Service Provisions.** The manner in which the services are to be performed and the specific hours to be worked shall be determined by DataSync. Client understands that DataSync is not an employee, and that this will be a collaborative, professional relationship where mutual professional respect, courtesy and consideration are expected. Both Parties understand the importance of communication, especially via email, and agree to respond to questions, requests and communications from each other in a timely manner. Client understands that DataSync is an active business with other clients to serve, and requires fair, realistic notice to schedule the work hours of its staff to perform these services. Client further understands that DataSync may require detailed clarification of Client information in order to meet Client's expectations, which may delay the completion of any given

part of the services to be provided. The accuracy of information supplied by Client to DataSync is the sole responsibility of Client and DataSync is not responsible and shall not be held liable for the results of services performed based on inaccurate or incomplete information furnished by Client.

**2.7 SugarCRM Support Services.** Client acknowledges and agrees that all SugarCRM software problems, including data import and configuration tools problems, shall be referred and reported by Client directly to SugarCRM.

**2.8 Microsoft Support Services.** Client acknowledges and agrees that all Microsoft software problems, including data import and configuration tools problems, shall be referred and reported by Client directly to Microsoft.

### **3. Intellectual Property Rights & Client Data.**

**3.1 Title and Cross-Licenses.** In performing services for Client under this Agreement, DataSync may use its existing intellectual property and may in addition develop new intellectual property. Each Party acknowledges and agrees that it shall own all right, title and interest in and to any intellectual property previously created by them and used by DataSync for Client's services. Further, DataSync may develop additional new intellectual property which shall be considered by the Parties as a "work for hire", the right, title and interest to which shall be owned by Client. With respect to these intellectual property rights, each Party hereby grants to the other a non-exclusive, royalty-free, transferable, irrevocable, non-cancellable, worldwide, fully paid-up right and license (with rights to sublicense through multiple tiers of sub licensees) to fully use, practice and exploit all such intellectual property owned by the Party including, without limitation, the right to make, have made, use, have used, sell, offer for sale, have sold, distribute, import or include in other software such property. The cross licensing provisions of this Section 3.1 do not apply to Client Data or any Confidential Information.

**3.2 Nonexclusive Services.** Client acknowledges that DataSync has customized and provided, and will continue to customize and provide, software and technology to other parties for use in connection with a variety of applications and that some of these other parties may now or in the future be in direct or indirect competition with Client or Client's clients. Nothing in this Agreement will be deemed to limit or restrict DataSync from customizing and providing its software and technology to other parties for any purpose, including using any of the intellectual property developed under this Agreement, or shall in any way affect the rights granted to such other parties.

**3.3 Client Data.** As between DataSync and Client, Client Data shall at all times remain the sole and exclusive property of Client. Unless otherwise specifically required by a Contract Document, Client shall be solely responsible for the safeguarding of Client Data and shall not disclose or

transfer the Data to DataSync, or allow DataSync to copy the Data, in whole or in part. The Parties hereby acknowledge and agree that unless otherwise specified in a Contract Document, DataSync only requires access and knowledge of Metadata to perform its Services under this Agreement. Where Data is required to perform quality assurance testing, Client shall provide DataSync with dummy (or test) data to perform the testing and Client shall be responsible for all such testing on actual Client Data as part of its acceptance testing process. Client is solely responsible for the content of any database, the selection and implementation of controls on its access and use, and the backup and recovery and the security of the stored Data. This security also includes any procedures necessary to safeguard the integrity and security of Data used in the Project from access by unauthorized personnel. Client is also responsible for the identification and interpretation of any applicable laws, regulations, and statutes that affect Client's Data and for ensuring that access to the Data, including access by DataSync, if any, meets these requirements. Client Data disclosed or made available to DataSync by Client, whether intentionally or not, shall be treated by DataSync as Client Confidential Information under this Agreement.

#### 4. Fees and Payments.

##### 4.1 Fees, Taxes and Other Charges.

**4.1.1 Subscriptions & Licenses.** Fees applicable to software licensing or subscriptions ordered or renewed by DataSync pursuant to Section 2.1 shall be invoiced to Client at the applicable rate upon the placement of the order or renewal. Payment in full must be made before any subscription or license will be placed. If payment for a subscription or license renewal is not timely received by DataSync, DataSync will allow the subscription or license to lapse and/or disconnect the subscription or license. The lapse or disconnection of a subscription or license will result in the immediate inability of Client to use the software and could entail the potential loss of all data and a significant delay in reactivation of the service once a late payment is received.

**4.1.2 Technical Support and Professional Service Fees.** All fees for Services performed under Section 2 other than subscription and license fees covered by Section 4.1.1, and including but not limited to the preparation of Contract Documents and the preparation and management of the Project Plan, will be billed monthly on a time and materials basis and are due on receipt of the invoice. Services will be billed at the Service Rate, which rate may be modified by DataSync at its discretion upon 60 days prior notice to Client provided, however, that any such rate change shall not apply to tasks and other work then in progress. The Parties may also agree to a different Service Rate for particular Projects which shall be explicitly stated in a Contract Document.

**4.1.3 Retainer Amounts.** If Client has agreed to pay a Retainer in a Contract Document, DataSync will immediately invoice to Client the Retainer Amount. No further services will be performed by DataSync until after receipt of this payment. Retainer Amounts shall be held by DataSync without interest. Services will be billed to Client at the Service Rate and immediately applied against the Retainer Amount. Client is responsible for replenishing the Retainer Amount upon receipt of this invoice. ***Unused Retainer amounts which are not used within six (6) months from the Effective Date shall automatically revert to DataSync.***

**4.1.4 Travel.** Reasonable travel expenses will be billed at the actual amounts without markup. Travel time will be billed by DataSync at a rate of \$100.00 per hour.

**4.1.5 Other Expenses.** Telephone, photocopy, fax and other general office supplies are included in the Service Rate. Any other out-of-pocket expenses or special charges incurred by DataSync in connection with providing services under this Agreement such as software, graphics, third-party services, or other purchases made specifically for Client will be directly billed by DataSync to Client and are due upon receipt. DataSync agrees to use its commercially reasonable best efforts to inform and consult with Client prior to incurring any material expenses. DataSync will keep all records and receipts for such expenses and charges and make copies of them available to Client upon request.

**4.1.6 Taxes.** All amounts payable under this Agreement are exclusive of all sales, use, value-added, excise, property, withholding, and other taxes and duties. Client agrees to pay all taxes and duties assessed by any authority in connection with this Agreement and to promptly reimburse DataSync for any and all taxes or duties that DataSync may be required to pay in connection with this Agreement or its performance. This provision does not apply to franchise taxes, taxes based on DataSync's income, or any taxes for which Client is exempt, provided Client has furnished DataSync with a valid tax exemption certificate.

**4.2 General Payment Terms.** Unless otherwise agreed to by the Parties in Contract Document, all payments shall be made by business check in US dollars and are due upon receipt by Client of an invoice. Invoices may be delivered by mail or by email, at DataSync's discretion. The Parties agree that invoices shall be deemed accurate and correct unless Client submits a written objection detailing the amounts in error within ten (10) of the invoice date. All amounts not paid when due shall be subject to a late charge equal to one and one-half percent (1.5%) per month, or, if less, the maximum amount allowed by applicable law. Client shall be responsible for all related fees, including wire transfer fees, bank fees, correspondent bank fees and other fees related to their payments. Client shall not have the right to set off, compensate or make any deduction from such payments for any reason whatsoever. ***All payments made under this Agreement are nonrefundable.***



**4.3 Disputes Involving Credit Card Payments.** As a condition of DataSync agreeing to accept Client's credit card as an approved form of payment, Client hereby specifically agrees to waive any rights Client might have under applicable state and federal truth in lending laws or otherwise (including, but not limited to, under Client's credit card issuer's procedures for resolving such disputes) to receive a temporary credit from Client's credit card issuer for disputed charges arising from Client's credit card transactions with DataSync (commonly referred to as a "chargeback"). Client agrees that any disputes that may arise with respect to payment must be addressed directly with DataSync, and the Parties agree to work in good faith to resolve any such disputed amounts in a timely manner.

**4.4 Acceptance of Payment.** No payment by Client or receipt by DataSync of a lesser amount than the amount then due shall be deemed to be other than on account of the earliest portion due, nor shall any endorsement or statement on any check or any letter, email or other note accompanying any check or payment be deemed an accord and satisfaction. DataSync may accept any such check or payment without prejudice to its right to recover the balance due. At DataSync's discretion, payments may be applied to the earliest outstanding amounts due notwithstanding and specific invoice reference made by Client.

## **5. Term and Termination.**

**5.1 Term.** The term of this Agreement shall commence on the Effective Date and shall continue for a period of twelve (12) months and thereafter shall automatically renew for successive periods of 12 months at each renewal unless terminated as provided below in this Section 5.

**5.2 Termination Option.** Either Party may terminate this Agreement for or without cause upon thirty (30) days prior written notice to the other.

**5.3 Termination for Material Breach.** Either Party may, at its option, terminate this Agreement upon written notice to the other Party if the other Party materially breaches any of the terms and conditions of this Agreement and if such material breach has not been cured within thirty (30) days after written notice to the other Party. Notwithstanding the foregoing, the Parties agree that the failure of Client to pay any amount when due will be considered a material breach regardless of amount and at the discretion of DataSync, may be grounds for the immediate termination of this Agreement without further notice and without a cure period.

**5.4 Termination for Insolvency.** This Agreement may be terminated by either Party, on notice, (i) if the other Party becomes insolvent, (ii) upon the institution by the other Party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of its debts, (iii) upon the institution of such proceedings against the other

Party, which are not dismissed or otherwise resolved in such other Party's favor within sixty (60) days thereafter, (iv) upon the other Party's making a general assignment for the benefit of creditors, or (v) upon the other Party's dissolution or ceasing to conduct business in the normal course.

**5.5 Effect of Termination.** Upon termination of this Agreement all rights granted to Client hereunder, and all obligations of DataSync hereunder, shall immediately terminate. Client shall continue to be liable for, and to make, all unpaid amounts due and any amounts due for software licenses or subscriptions then in effect. If all unpaid amounts are paid, Client shall have the right to continue to use all intellectual property rights granted to it under the terms of Sections 2.1 and 3.1, which the Parties expressly agree shall for this purpose survive the termination of this Agreement and remain in full force and effect. The Parties further agree that the following sections shall survive the termination of this Agreement to the extent that they define and limit a Party's obligations hereunder: 1, 2, 3.2, 4, 5.6, 5.7, 6, 7, and 8.

**5.6 Injunctive Relief.** Client acknowledges that there would be no adequate remedy at law for its failure to cease the use of the license rights granted under Section 2.1 or 3.1 at the termination or expiration hereof, and Client agrees that in the event of such failure DataSync and any effected Third Party Software vendor shall be entitled to equitable relief by way of temporary and permanent injunction and such other and further relief as any court with jurisdiction may deem just and proper. Such relief shall be in addition to and not in substitution of any other remedies available to DataSync or a Third Party Software vendor pursuant to this Agreement or otherwise.

**5.7 Other Remedies.** Nothing contained herein shall limit any other remedies that DataSync may have for the default of Client under this Agreement nor relieve Client of any of its payment or obligations incurred prior to termination of this Agreement.

## **6. Confidential Information.**

**6.1 Confidentiality.** A Receiving Party shall treat as confidential all Confidential Information of the Disclosing Party, shall not use such Confidential Information except as necessary to perform the services hereunder, and shall use reasonable efforts not to disclose such Confidential Information to any third party. Without limiting the foregoing, the Receiving Party shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information. Each Party shall promptly notify the other of any actual or suspected misuse or unauthorized disclosure of Confidential Information.

**6.2 Exceptions.** Notwithstanding the above, neither Party shall have liability to the other with regard to any

Confidential Information which: (a) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the Receiving Party; (b) was known to the Receiving Party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (c) is disclosed with the prior written approval of Disclosing Party; (d) became known to the Receiving Party, without restriction, from a source other than the Disclosing Party without breach of this Agreement by the Receiving Party and otherwise not in violation of the Disclosing Party's rights; ) is independently developed by the Receiving Party without the aid, use or application of any Confidential Information obtained hereunder, or (f) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the Receiving Party shall use all reasonable efforts to provide prompt, written, and sufficient advance notice thereof to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure.

**6.3 Return of Confidential Information.** Each Party shall promptly return the Disclosing Party's Confidential Information to the Disclosing Party (i) upon termination of this Agreement, or (ii) upon receipt of written notice from the Disclosing Party requesting return of such Confidential Information.

## **7. Warranties and Indemnities.**

**7.1 Performance by DataSync.** DataSync agrees to use its commercially reasonable best efforts to perform all Services under this Agreement, including fixing all software Bugs, in a professional and workmanlike manner such that they materially comply with the agreed upon specifications and requirements set forth in the applicable Contract Documents. Client's sole and exclusive remedy, and DataSync's sole and exclusive obligation, for a breach of the immediately preceding sentence shall be (i) the correction of the problem within reasonable time so as to comply, (ii) provision of mutually agreed replacement Services, or (iii) if DataSync is unable to satisfactorily perform such Services, that at DataSync's discretion, DataSync may refund all the fees paid to DataSync under the applicable Contract Document, as the case might be, and DataSync shall have no further obligation or duty to perform that part of the Services. Client agrees to notify DataSync in writing of any nonconformance within 30 days of the date on which the Service is completed. The foregoing general warranty and related remedies are further limited by the following provisions of this Section 7:

### **7.2 Software Infringement Claims**

**7.2.1 Limited Indemnity.** DataSync will defend or settle, at its expense, any action brought against Client based upon a claim that the Software it provides hereunder infringes an issued U.S. patent, copyright or other third party's rights, and DataSync further agrees to pay all

damages and costs finally awarded against Client attributable to such claim; provided that Client (a) notifies DataSync promptly in writing of any such claim, (b) gives DataSync sole control of the defense and/or settlement of such action, and (c) gives DataSync all authority, information and assistance reasonably necessary to settle or defend such claim. DataSync shall reimburse Client for incidental out-of-pocket expenses incurred by Client in providing such assistance. DataSync shall not be liable for any costs or expenses incurred without its prior written authorization.

**7.2.2 DataSync Options.** If the Software becomes, or in the opinion of DataSync may become, the subject of a claim of infringement of any issued patent, copyright or other third parties rights, DataSync may, at its option: (i) obtain the right for Client to continue to use the intellectual property in question consistent with this Agreement; (ii) modify the intellectual property so that it is non-infringing; or (iii) refund all of Client's money paid under this Agreement with respect to the intellectual property in dispute, and all of Client's rights under this Agreement with respect to such property shall automatically terminate.

**7.2.3 Exclusions from Indemnity.** DataSync shall have no obligation to defend Client or to pay costs, damages or attorney's fees for any claim based upon the combination, operation or use of any of the services furnished hereunder with non-DataSync programs, Third Party Software, or data if such infringement would have been avoided but for the combination, operation or use of these services with such programs or data.

**7.2.4 Sole and Exclusive Liability.** THIS SECTION 7.2 SETS FORTH THE SOLE AND EXCLUSIVE LIABILITY OF DATASYNC AND ANY THIRD PARTY SOFTWARE VENDORS FOR INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

**7.3 DISCLAIMER OF WARRANTIES.** DATASYNC AND THE THRID PARTY SOFTWARE VENDORS MAKE NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SERVICES, PRODUCTS, OR SOFTWARE PROVIDED UNDER THIS AGREEMENT, INCLUDING THEIR CONDITION, THEIR CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, OR THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, AND DATASYNC AND THE THIRD PARTY SOFTWARE VENDORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DATASYNC AND THE THIRD PARTY SOFTWARE VENDORS MAKE NO REPRESENTATION OR WARRANTY THAT THE OPERATION OF ANY OF THEIR PRODUCTS, SOFTWARE OR OTHER SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, AND DATASYNC AND THE THRID PARTY SOFTWARE VENDORS SHALL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CLIENT SPECIFICALLY ACKNOWLEDGES AND

UNDERSTANDS THAT THE SOFTWARE, INCLUDING ANY THIRD PARTY SOFTWARE, IS NOT DESIGNED OR DEVELOPED FOR USE IN ANY NUCLEAR, AVIATION, MASS TRANSIT OR MEDICAL APPLICATION OR IN ANY OTHER INHERENTLY DANGEROUS APPLICATION. *(Last Revised on 06/01/16)*

**7.3 Specific Claims For Which DataSync is Not Responsible.** Without limiting the generality of the foregoing, DataSync has no liability regarding any claim arising from or related to any of the following:

- Anything provided by Client or a third party on Client's behalf that is incorporated into the Software, or DataSync's compliance with any designs, specifications, or instructions provided by Client or a third party on Client's behalf.
- Modification of the Software by Client or a third party on Client's behalf or any changes or modifications made by Third Party Software providers notwithstanding the fact that such modifications might cause the Software, Deliverables, and/or other Services performed by DataSync to cease to function.
- Software use other than in accordance with the applicable licenses and restrictions.
- The combination, operation, or use of the software with any program, hardware device, data, apparatus, method, or process which has not been approved in advance by DataSync.
- Disclosure by Client of Client Data where such disclosure is not specifically required by a Contract Document.
- The distribution, operation or use of the Software for the benefit of any third party.

**7.4 Indemnity by Client.** Client agrees to indemnify and hold DataSync and any Third Party Software Vendor, and their shareholders, officers, employees, contractors and agents, harmless from and against any loss, cost or expense (including attorneys' fees) resulting from any and all claims by third parties for loss, damage or injury (including death) allegedly caused by the negligence, misrepresentation, misconduct, error, omission, intentional breach of this Agreement, or any other action of Client, its shareholders, officers, employees, partners, or other agents.

**7.5 Limitation of Liability.** *Client agrees that DataSync's and any other Third Party Software Vendor's liability arising from this Agreement shall in no event exceed the payments received by DataSync (or the Third Party Software vendor, as the case might be) from Client under this Agreement.* Client further acknowledges and agrees that DataSync shall have no responsibility or liability

for the operation of Third Party Software or other third party services or for any Software Bugs, data loss or other service interruptions of Third Party Software.

NO PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOSS OF BUSINESS, INTERRUPTION OF BUSINESS, LOSS OF USE, OR LOSS OF DATA, OR FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, FOR ANY CLAIM OR DEMAND AGAINST THE OTHER PARTY BY ANY OTHER PARTY, OR FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, UNDER OR ARISING OUT OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR OTHERWISE KNEW THAT SUCH DAMAGES WERE POSSIBLE OF REASONABLY FORESEEABLE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE PERFORMANCE OF THE PARTIES AND THE AMOUNTS PAYABLE HEREUNDER ARE BASED IN PART UPON THESE LIMITATIONS, AND THAT THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**7.6 Limit on Causes of Action.** NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY CLIENT AGAINST DATASYNC OR ANY THIRD PARTY SOFTWARE VENDOR MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

**7.7 Allocation of Risk.** THE PARTIES UNDERSTAND AND AGREE THAT THE REMEDIES AND LIMITATIONS SET FORTH IN THIS AGREEMENT ALLOCATE THE RISKS BETWEEN THE PARTIES. THE RATES AND FEES HEREIN REFLECT, AND ARE SET IN RELIANCE UPON, THIS ALLOCATION OF RISK.

**7.8 Notice of Claims.** Client shall notify DataSync, in writing, of any claim or proceeding, actual or threatened, involving the services provide under this Agreement within ten (10) days after Client learns of such claim or proceeding. All such claims, proceedings, and suspected defects shall be deemed DataSync's Confidential Information. *(Last Revised on 06/01/16)*

## **8. General Provisions.**

**8.1 Action by Parties.** Whenever under the terms of this Agreement any action is required or permitted to be taken by DataSync or Client, such action may be taken and performed by any authorized officer, director or other representative of such Party, including a Party's Project Manager, and such action shall be binding on the Party.

**8.2 Notices.** Any notices, requests, demands and other communications provided for by this Agreement shall be sufficient if in writing and (1) emailed to the other Party at the email address set forth below or as otherwise specified in a Contract Document, (2) delivered in person or (3) sent by a nationally recognized overnight courier service or by

registered or certified mail, postage prepaid, return receipt requested, to the other Party at the address set forth below or in the Contract Documents (or at such other address as such Party may designate by written notice in accordance with the provisions of this Section 8.2) and shall be effective on the date of delivery in person, by email or by courier or three (3) days, whichever first occurs.

**If to DataSync:**

DataSync Corporation  
101 West 69<sup>th</sup> Street, Suite 101  
Sioux Falls, SD 57108  
Attn: Craig A. Anderson  
Phone: 605-275-4100  
Email: [craig.anderson@datasyncsolutions.com](mailto:craig.anderson@datasyncsolutions.com)  
with a copy to  
[accounting@datasyncsolutions.com](mailto:accounting@datasyncsolutions.com)

**If to Client:** To the Client's Project Manager at the address and contact information identified in the Contract Documents.

**8.3 Limited License to Client Marks.** Upon prior approval by Client and at Client's sole and absolute discretion, Client may grant to DataSync a non-transferable, non-exclusive license to reproduce and display Client's logos, trademarks, trade names and similar identifying materials so that DataSync may refer to Client as a Client such as on DataSync's website, in press releases and in other marketing materials. DataSync shall not alter, modify or change such identifying information in any way. Any goodwill or other value arising from DataSync's use of Client's identifying information shall inure exclusively to the benefit of DataSync.

**8.4 Assignment.** All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement and to their respective heirs, successors, assigns and legal representatives. No Party may assign this Agreement, or any rights granted to it under this Agreement, in whole or in part, without the prior written consent of the other, such consent not to be unreasonably withheld. Any assignment by Client shall not result in an increase in the scope of the rights granted by DataSync or any Third Party Software vendor pursuant to this Agreement.

**8.5 Waiver.** No waiver of any right under this Agreement shall be effective for any purpose unless in writing and signed by the Party thereto possessing the right, not shall any such waiver be construed to be a waiver of any subsequent right, term or provision of this Agreement.

**8.6 Construction and Interpretation of Agreement.**

**8.6.1 Headings.** The headings of the several sections of this Agreement are intended for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

**8.6.2 Governing Law.** This Agreement shall in all respects be governed by the laws of the United States and the State of South Dakota, determined without regard to its Conflict of Laws provisions. The Parties hereby agree that all disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of and venue in the United States Federal District Court for the District of South Dakota. The Parties hereby consent to the personal and exclusive jurisdiction and venue of this court.

**8.6.3 Partial Invalidity and Severability.** If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, they are, to that extent, deemed omitted and the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be effected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**8.6.4 Characterization of Agreement.** The relationship between DataSync and Client under this Agreement is that of independent contractors and neither shall be, nor represent itself to be, the joint venture, franchiser, franchisee, partner, broker, employee, servant, agent, or representative of the other for any purpose whatsoever. Nothing contained in this Agreement shall be construed to (i) give either Party the power to direct or control the day-to-day activities of the other, or (ii) allow either Party to create or assume any obligation on behalf of the other for any purpose whatsoever. Each Party's employees who perform services related to this Agreement shall remain under the exclusive direction and control of their respective employer and shall receive such salaries, compensation and benefits as their respective employer may from time to time determine. Each Party shall have full and sole responsibility for its employees who perform any service related to this Agreement with regard to compliance with all applicable laws, rules and regulations governing such party relating to employment, labor, wages, benefits, taxes and other matters affecting its employees.

**8.6.5 Interpretation.** The Parties agree that the terms and provisions of this Agreement embody their mutual intent and that this Agreement and its terms and provisions are not to be construed more liberally in favor of, or more strictly against, any Party hereto. In entering into and signing this Agreement, such Party has had the benefit of the advice of attorneys of such Party's own choosing, and enters into this Agreement freely by such Party's own choosing and judgment, and without duress or other undue influence. The Parties hereto respectively each acknowledge and agree that no representation, warranty or inducement has been made to them which is not expressly set forth in this Agreement.

**8.7 Force Majeure.** Neither Party will be responsible for any failure to perform its obligations (other than payment obligations) under this Agreement due to reasons beyond its reasonable control, including without limitation acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods or accidents.

**8.8 Applicable Laws and Regulations.**

**8.8.1 Export Laws and Regulations.** Any obligation of DataSync or any Third Party Software Vendor to provide any services under this Agreement shall be subject in all respects to all United States laws and regulations governing the license and delivery of technology and products abroad by persons subject to the jurisdiction of the United States. Client shall not export, directly or indirectly, any rights or other intellectual property provided by DataSync or any Third Party Software vendor under this Agreement without first obtaining all required licenses and approvals from the appropriate government agencies as well as the prior written consent of DataSync.

**8.8.2 Equal Opportunity Clause.** DataSync hereby agrees to abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a), and 41 CFR 60-741.5(a), which are incorporated herein by this reference. These regulations prohibit discrimination against qualified individuals on the basis of race, color, religion, sex, national origin, veteran status, or disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified minorities

and females, qualified protected veterans, and qualified individuals with disabilities.

**8.9 Further Assurances.** Each of the Parties agrees to perform all such acts (including, but not limited to, executing and delivering such instruments and documents) as reasonably may be necessary to fully effectuate each and all of the purposes and intent of this Agreement.

**8.10 Third Party Beneficiaries.** No person or entity other than the Parties hereto and their respective, successors and permitted assigns shall have any rights as a third party beneficiary under or as a result of this Agreement except that all Third Party Software vendors shall be considered as third party beneficiaries under this Agreement with their own independent rights to enforce its terms and conditions against Client. Without limiting the generality of the foregoing, the Parties specifically agree that no customer of Client shall have any rights under this Agreement, including any rights as a third party beneficiary.

**8.11 Entire Agreement.** This Agreement, including any Contract Document, constitute the entire understanding and agreement between the Parties and supersede all prior agreements and understandings with respect to the matters covered herein; they may not be altered, amended or extended except by an instrument in writing signed by the Parties, which may include an implied signature by email acknowledgement. Without limiting the generality of the foregoing, the Parties specifically agree that the terms and conditions of this Agreement shall prevail in the event of any conflict with any purchase order or invoice produced by DataSync or Client.

**END OF MASTER SERVICES AGREEMENT**