

This Master Services Agreement ("**MSA**") dated [REDACTED] ("**Effective Date**") is made by and between Ascend Technologies, LLC, having an office at 200 W. Adams Street, Suite 1600, Chicago, IL 60606 ("**Ascend**") and City of Peoria, having a principal office at City Hall Building, 419 Fulton Street, Rm 108, Peoria IL 61602 ("**Client**").

WHEREAS, Client desires to obtain certain services from Ascend from time to time; and

WHEREAS, Ascend desires to provide such services to Client on the terms set forth below.

FOR AND IN CONSIDERATION OF the premises and mutual agreements contained herein, Ascend and Client agree as follows:

Section 1. Definitions.

"**Agreement**" means this MSA together with a Statement of Work.

"**Confidential Information**" means information in tangible and/or electronic form that relates to a party's past, present, or future research, development, business activities, products, services, trade secrets or technical knowledge and that is marked as confidential or reasonably discernable as the confidential information of such party.

"**Deliverables**" means those tangible results of the performance of the Services that are expressly identified as a "Deliverable" in a Statement of Work and are originally created for, and delivered to, Client by Ascend as set forth in the applicable Statement of Work.

"**IP Rights**" means with respect to a party: (i) such party's intellectual property, methodologies, templates, concepts, data, algorithms, formulas, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements, programs, systems, tools, source code, object code, databases, applications, engine protocols, routines, models, displays and manuals as in existence prior to the Agreement or developed outside the Agreement, and any derivative works of any such items developed pursuant to the Agreement; (ii) any works created solely by such party under the Agreement; and (iii) any patents, patent rights, copyrights, trade secrets, trademarks, trade names, service marks and other intellectual property associated with the works listed in (i) or (ii).

"**Services**" means those services set forth in a Statement of Work to be performed by Ascend.

"**Statement of Work**" means that document which: (i) incorporates the terms and conditions set forth in this MSA; (ii) is executed by each of the parties hereto; and (iii) sets forth the transaction-specific information related to an engagement between the parties.

Section 2. Services. Subject to the terms of the Agreement, Ascend will provide Client the Services set forth in a Statement of Work. Ascend may utilize subcontractors to perform a portion of the Services. If Ascend, at the request of or with notice to Client, performs services that are not covered by a Statement of Work or that exceeds the scope of Services defined in the applicable Statement of Work, such services shall be deemed Services provided pursuant to this MSA for which Client shall compensate Ascend pursuant to the Section entitled "Fees and Payment Terms".

Section 3. Fees and Payment Terms. Unless otherwise explicitly set forth in the applicable Statement of Work, all Services are provided on a time and materials basis at Ascend standard hourly rates. Client shall: (i) pay all undisputed portions of the fees as set forth in the applicable Statement of Work; (ii) reimburse all reasonable expenses incurred by Ascend in the performance of the Services, including travel and lodging expenses, communication charges and other reasonable supplies; and (iii) be responsible for all taxes, including any interest and penalties from any related deficiency, in connection with the applicable Statement of Work (except taxes based on or measured by Ascend's net income). Unless otherwise explicitly set forth in the applicable Statement of Work, Client shall pay the amounts payable in U.S. Dollars to Ascend within thirty (30) days of the date of invoices submitted by Ascend. Ascend reserves the right to charge interest on any past due amounts at a rate of the lesser of one and one-half (1.5%) percent per month or the highest rate allowed by law, and Client shall indemnify Ascend for all costs, including expenses and attorney's fees, incurred by Ascend in the

collection of overdue payments. An invoice is "disputed" if Client notifies Ascend of a good faith dispute within five (5) days of receipt of invoice.

Section 4. Mutual Confidentiality. During the course of Ascend performing Services for Client, a party ("**Recipient**") may be given access to the Confidential Information of the other party ("**Discloser**"). Discloser, or its licensors, own Discloser's Confidential Information. Recipient agrees to: (i) protect Discloser's Confidential Information in a reasonable and appropriate manner to the same extent it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event less than a reasonable manner; and (ii) use and reproduce Discloser's Confidential Information only to perform its obligations and exercise its rights pursuant to the Agreement. Recipient may share Discloser's Confidential Information with its employees and third parties that assist Recipient in its performance of its obligations and the exercise of its rights pursuant to the Agreement and who are subject to non-disclosure obligations no less restrictive than those set forth herein. The obligations set forth in this Section shall not apply to information which is: (a) publicly known; (b) already known to the Recipient; (c) disclosed to Recipient by a third party who is not, to Recipient's knowledge, under a confidentiality restriction with respect to such Confidential Information; or (d) independently developed by the Recipient. Disclosure of Confidential Information pursuant to applicable law, a subpoena or other validly issued administrative or judicial process shall not be a breach of Recipient's obligations, provided that Recipient shall provide prior notice to Discloser of such disclosure if permitted by law. Recipient shall immediately notify Discloser in the event it becomes aware of any loss or disclosure of any Confidential Information of the Discloser Notwithstanding anything to the contrary in this Agreement, Client agrees and hereby grants to Ascend the right to use Client's name and logo in Ascend's client credentials and for purposes associated with Ascend's client credentials.

Section 5. Intellectual Property and License.

5.1 Ascend Ownership. Ascend owns and will continue to own all right, title and interest in the IP Rights of Ascend, excluding any Client Confidential Information contained therein.

5.2 Client Ownership. Client owns and continues to own all right title and interest in Client's IP Rights and in all of its data supplied by Client to Ascend for use in connection with the Services.

5.3 License Grant to Ascend. Client hereby grants Ascend a non-exclusive license to use and operate during the term of the Agreement any software owned, developed or licensed by or for Client ("Client Software"), including all documentation, reference manuals, diagrams, and source code, for the exclusive purpose of providing the Services to Client. The license granted hereunder is a fully paid license and no ongoing maintenance or other fees will be charged to Ascend during the term of this Agreement.

5.4 License Grant to Client. Upon payment, Ascend grants to Client a non-exclusive license to use the Deliverables for Client's internal business purposes. To the extent Client acquires any ownership rights in the IP Rights of Ascend, Client hereby assigns those rights to Ascend and will cause each of its employees and each employee of its contractors to waive their respective moral rights in and to such IP Rights.

Section 6. Client Responsibilities. Client shall fulfill the following client responsibilities and those set forth in the applicable Statement of Work. Client shall: (i) ensure that all assumptions set forth in the Agreement are accurate; (ii) provide Ascend with reliable, accurate and complete information as required; (iii) make timely decisions and obtain required management approvals; (iv) furnish Ascend personnel with a suitable office environment and adequate resources and supplies, as needed; (v) obtain all consents, approvals and licenses necessary from third parties required for Ascend to perform its obligations under the Agreement; and (vi) retain responsibility for its compliance with all applicable federal, state/provincial and local laws and regulations. In addition, Ascend shall be entitled to rely on all Client decisions and approvals made in relation to the Agreement and/or prior to its execution by the parties. Nothing in the Agreement shall require Ascend to evaluate, advise on, modify, confirm, or reject such decisions and approvals, except as otherwise explicitly set forth in a Statement of Work. Client will indemnify Ascend, its affiliates and their principals, agents and personnel against all costs, fees, expenses, damages and liabilities (including attorneys' fees and other defense costs) associated with any third party claim relating to or arising as a result of Ascend's provision of the Services, Client's use of the Deliverables, or the Agreement (including claims resulting from a breach of security), excluding claims addressed in the Section herein entitled "Infringement Indemnification" and any claims resulting from the negligence, willful misconduct or fraud of Ascend.

As the timely performance of Client obligations and the accuracy of any assumptions set forth in a Statement of Work are material to Ascend's ability to provide the Services, in the event Client does not perform Client obligations in a timely manner, or the assumptions are not accurate, Ascend has the right to suspend Services, and Ascend shall not be responsible for any loss, damage or expense resulting from such suspension.

Section 7. Acceptance. The specific acceptance criteria, acceptance test plan and specifications, if applicable, are set forth in the Statement of Work. Client shall accept Deliverables which: (i) materially conform to the specifications set forth in the Statement of Work; or (ii) where applicable, successfully complete the acceptance test plan described in the Statement of Work in all material respects (collectively, "Acceptance Standards"). Client will promptly give Ascend notice of any failure of the Deliverables to meet the Acceptance Standards, specifically detailing the reason why the Deliverables do not meet the Acceptance Standards ("Non-conformance"), and Ascend shall have a reasonable period of time, based on the severity and complexity of the Non-conformance, to correct the Non-conformance. If Client uses the Deliverable for its internal business purposes, fails to promptly notify Ascend of any Non-conformance within fourteen (14) days after delivery, or unreasonably delays the beginning of acceptance testing, then the Deliverable shall be considered accepted by the Client no later than the fourteenth (14th) day after delivery.

Section 8. Change Order Process. Either party may at any time request a change to the scope of the Deliverables or Services, and the parties shall reasonably cooperate with the other in the evaluation of any requested change. Neither party shall be bound by any change order unless approved in writing by Ascend.

Section 9. Limited Warranty.

9.1 Services Warranty. Ascend warrants that the Services shall be performed with reasonable care in a diligent and workmanlike manner, consistent with industry standards. Ascend's sole obligation and liability and Client's sole and exclusive remedy for breach of this warranty shall be for Ascend to reperform any Services brought to its attention within thirty (30) days after the Services are performed.

9.2 Third-Party Products. Ascend does not warrant and is not responsible for any third-party products or services, if any. Client's sole and exclusive rights and remedies with respect to any third-party products or services are against the third party vendor and not against Ascend. Client acknowledges that Ascend may have relationships with third party vendors of products and services and may receive consideration from such vendors in connection with Ascend reselling such products or services to Client or referring such vendors to Client.

9.3 Disclaimer.

THIS SECTION ENTITLED "LIMITED WARRANTY" CONTAINS ASCEND'S ONLY WARRANTY ARISING OUT OF PROVISION OF THE SERVICES, ASCEND ONSITE TOOLS AND DELIVERABLES, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES AND CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, NON-INFRINGEMENT, INFORMATIONAL CONTENT, SYSTEMS INTEGRATION, INTERFERENCE WITH ENJOYMENT, FITNESS FOR A PARTICULAR PURPOSE, THAT THE SERVICES OR DELIVERABLES WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS OR WILL ASSIST WITH OR ENSURE COMPLIANCE WITH ANY APPLICABLE LAWS OR REGULATIONS, OR OTHERWISE.

WITHOUT LIMITING THE FOREGOING, ASCEND MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND THAT THE SERVICES, ACTIVITIES OR DELIVERABLES MEET ANY STANDARD OF SECURITY REQUIREMENTS NOR CAN ASCEND PROVIDE ASSURANCE AGAINST ALL POSSIBLE SECURITY VULNERABILITIES (EVEN WHERE THE SCOPE OF THE ENGAGEMENT INVOLVES IDENTIFYING SECURITY VULNERABILITIES).

Section 10. Risk Allocation.

10.1 Cap on Liability. Ascend's total liability arising out of the Agreement for all claims in any manner arising in connection with the Agreement (whether in contract, tort, negligence, strict liability in tort or by statute or otherwise, whether arising from contractual or extra-contractual liability) shall be the payment of direct damages and such damages in no event shall:

(i) exceed in the aggregate of the fees Ascend receives under the applicable Schedule giving rise to the claim during the six (6) months immediately preceding the claim; or (ii) include any indirect, special, consequential, incidental, punitive or exemplary damages or loss (including business interruption, lost profits, lost savings or lost business), even if it has been advised of their possible existence. Without limiting the foregoing, Ascend will have no liability of any kind arising from any failure, degradation or delay of any Services: (i) caused by the failure or dysfunction of any Client property, third party materials, third party services, energy sources or communication devices; and/or (ii) related to networks, systems or infrastructure of Client or third parties not within Ascend's exclusive control.

10.2 **Infringement Indemnification.** Ascend will defend Client against any third party claim alleging that the Deliverable infringes such third party's copyrights or trade secrets, at Ascend's expense, and will pay any costs or damages that may be finally awarded against Client as a result of such claim, provided Client notifies Ascend promptly of such third party claim and provides Ascend with reasonable assistance and the sole authority to defend and settle such claim. Ascend will have no obligations pursuant to this Section entitled "Infringement Indemnification" to the extent such third party claim is caused by: (i) misuse or modification of the Deliverable by or on behalf of Client, or use of the Deliverable in breach of the terms of the Agreement; (ii) Client's failure to use corrections or enhancements made available by Ascend; (iii) Client's use of the Deliverable in combination with any product or information not owned or developed by Ascend; (iv) Client's distribution, marketing or use for the benefit of third parties of the Deliverable; or (v) information, direction, specification or materials provided by Client or any third party. Ascend shall not settle any claim or suit that requires admission of fault by Client without the prior written consent of Client. If any Deliverable is, or in Ascend's opinion is likely to be, held to be infringing, Ascend shall at its expense and option either: (a) procure for Client the right to continue to use the Deliverable; or (b) replace or modify the Deliverable with a non-infringing equivalent; or (c) direct the return of the Deliverable and upon such return Ascend shall refund a prorated portion of the fees paid under the applicable Statement of Work for such Deliverable based on a five year straight line depreciation from the date of initial delivery. The remedies set forth in this Section entitled "Infringement Indemnification" constitute Client's sole and exclusive remedies and Ascend's entire liability with respect to infringement.

Section 11. Personnel.

11.1 **Assignment of Personnel.** While Ascend shall attempt to comply with Client's request for specific individuals, Ascend shall be responsible for assigning and re-assigning its personnel, as appropriate, to perform the Services.

11.2 **Non-Solicitation.** During the term of this MSA, and for a period of six (6) months following the expiration or termination hereof, neither party will, directly or indirectly, solicit, negotiate, engage, employ, or offer employment to, the personnel or contractor of the other party involved with providing Services hereunder. In the event of a breach of this Section entitled "Non-Solicitation", the breaching party shall pay compensation to the non-breaching party in the form of liquidated damages equal to the greater of one year's compensation either: (a) offered to the personnel or contractor by the breaching party; or (b) actually paid to the personnel or contractor by the non-breaching party during the first year the personnel or contractor is engaged or employed. Notwithstanding the foregoing, the parties hereby acknowledge and agree that the restrictions of this Section 11.2 shall not apply to the hiring by either party of any individual who, not being specifically solicited or targeted, responds to a general recruitment advertisement of the other party.

Section 12. Ascend Onsite Tools.

12.1 **Use of Onsite Tools.** Ascend may utilize remote monitoring products and other tools that are proprietary to Ascend or to third parties and that will be installed on Client's premises or systems ("Ascend Onsite Tools"), which include or will otherwise be communicated to Client: desktop monitoring agents, server monitoring agents, server management agents, monitoring appliances for collection and aggregation of data, or other such Ascend Onsite Tools necessary to perform the Services.

12.2 **Access and Installation.** Client shall cooperate with Ascend in the installation and operation of the Ascend Onsite Tools as reasonably requested by Ascend, including granting Ascend personnel or its designee, access to Client's premises upon reasonable request to perform maintenance or replace any Ascend Onsite Tools.

12.3 Removal Upon Termination. Ascend shall have the right to de-install and remove the Ascend Onsite Tools upon the termination or expiration of Services. Notwithstanding anything to the contrary in a Statement of Work, Client shall permit such de-installation and removal as soon as reasonably possible following such expiration or termination, but in any event within five (5) business days. Client shall cooperate with Ascend in any such de-installation and removal as reasonably requested by Ascend and at no cost to Ascend.

12.4 Confidentiality. The Ascend Onsite Tools are the Confidential Information of Ascend. Notwithstanding anything to the contrary in any Statement of Work, Client and its affiliates and contractors shall not access, use, modify, reproduce, transfer or attempt to reverse engineer, decompile or disassemble the Ascend Onsite Tools at any time.

13. Termination

13.1 Term. The term of this MSA shall commence on the Effective Date and shall continue until the earlier of: (a) all Statements of Work executed hereunder have expired or been terminated and the parties mutually agree to termination of this MSA, or (b) this MSA is terminated pursuant to the provisions of this Section 13.

13.2 Termination for Cause. Either party may terminate a Statement of Work or a Schedule for cause based upon the terms explicitly set forth in the applicable Statement of Work.

13.3 Termination for Insolvency. Either party may terminate this MSA or a Statement of Work immediately by written notice if the other party files a petition of bankruptcy, becomes insolvent, is unable to pay its bill as they become due or if such other party makes an assignment for the benefit of its creditors.

13.4 Consequences of Termination. In the event of termination, Client shall pay Ascend for all Services rendered and expenses incurred as of the date of termination, and shall reimburse Ascend for all unrecovered costs incurred by Ascend that are preapproved by Client, set forth in a Statement of Work or reasonably contemplated by the parties in anticipation of providing the Services during the term of the Agreement.

13.5 Internal Dispute Resolution. Except for matters related to confidentiality or intellectual property rights, the parties shall first attempt to resolve any dispute or alleged breach internally by escalating it through management.

Section 14. General

14.1 Assignment. Neither this MSA nor any Statement of Work may be assigned or otherwise transferred without the prior approval of the other party, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, in the event of an acquisition of all or substantially all of a party's assets, such party may assign this MSA and all Statements of Work to the acquiring company.

14.2 Notices. Any notices given pursuant to the Agreement shall be in writing, delivered via registered mail, overnight mail, courier, or personal delivery, to the address set forth in a Statement of Work (or, if not set forth, at the address set forth in the first paragraph of this MSA), and shall be considered given when received. Either party may change the name or address to which notices or other communications are to be sent by giving notice of such change to the other party. A copy of notices to Ascend shall also be sent to the attention of "Legal Counsel" at the address set forth in the first paragraph of this MSA.

14.3 Independent Contractor. The Agreement does not make either party an agent or legal representative of the other party, and does not create a partnership or joint venture. Both parties are independent contractors and principals for their own accounts.

14.4 Insurance. Each party will determine the types and amounts of insurance coverage it requires in connection with the Agreement. Neither party is required to obtain insurance for the benefit of the other party.

14.5 Survival. The terms of the Agreement that by their nature should survive termination or expiration of the Agreement so survive, specifically including but not limited to, Sections 4, 5, 9 and 10.

14.6 No Benefits for Third Parties. Nothing contained in the Agreement, whether express or implied, is intended, or shall be deemed, to create or confer any right, interest or remedy for the benefit of any person other than the parties hereto and their successors in interest and their actual permitted assignees.

14.7 Residuals. In no event shall Ascend be precluded from developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the Deliverables. In addition, Ascend shall be free to use the general knowledge, skills and experience of its personnel, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of providing the Services, as well aggregated, anonymous data derived from the provision of the Services.

14.8 Miscellaneous. Each Agreement constitutes the full and complete statement of the agreement of the parties with respect to the subject matter thereof and supersedes any previous agreements, understandings or communications, whether written or oral, express or implied, relating to such subject matter. If there is a conflict between the terms and conditions set forth in this MSA and the terms and conditions of a Statement of Work, the terms and conditions set forth in this MSA shall govern, unless explicitly stated otherwise in a Statement of Work or Schedule agreed to by the parties. The word "including" shall be construed to mean "including, without limitation". The word "or" shall mean "and/or" unless the context requires otherwise. The words "day," "month," and "year" mean, respectively, calendar day, calendar month and calendar year. The laws of the State of Delaware and the associated federal laws thereto, shall govern the Agreement, without giving effect to the conflict of law rules thereof, if applicable. The parties expressly agree to exclude the application of the U.N. Convention on Contracts for the International Sale of Goods (1980) to the Agreement and the performance of the parties contemplated herein, to the extent that such convention might otherwise be applicable. No action, regardless of form, arising out of, relating to or in any way connected with the Agreement, Services or Deliverables may be brought by either party more than one (1) year after the cause of action has accrued. Neither party shall be liable for any delays or failures in performance (other than payment obligations hereunder) due to circumstances beyond its reasonable control. No term of the Agreement shall be deemed waived, and no breach of the Agreement excused, unless the waiver or consent is in writing signed by the party granting such waiver or consent. No amendment to the Agreement shall be effective unless in writing and signed by the parties. If any term or provision of the Agreement is determined to be illegal or unenforceable, such term or provision shall be deemed stricken, and all other terms and provisions shall remain in full force and effect. The terms of this MSA shall be deemed the Confidential Information of both parties but the existence of the parties' relationship shall not be confidential. The terms of this MSA shall control over any additional purported confidentiality requirements imposed by an offering memorandum or electronic database, dataroom, or similar repository of Confidential Information to which Recipient or its Representatives are granted access in connection with the Agreement, notwithstanding acceptance of such an offering memorandum or submission of an electronic signature, "clicking" on an "I Agree" icon or other indication of assent to such additional confidentiality conditions, it being understood and agreed that the Recipient's and its Representatives' confidentiality obligations with respect to Confidential Information are exclusively governed by this MSA and may not be enlarged except by an agreement executed by the parties hereto. This Agreement may be executed in one or more counterparts and/or by facsimile or electronic submission, each of which will be deemed an original and all of which signed counterparts, taken together, will constitute one instrument.



IN WITNESS WHEREOF, the parties have executed this MSA as of the Effective Date through their duly authorized representatives.

Agreed and Acknowledged by:

City of Peoria

Ascend Technologies, LLC

Authorized Signature

Authorized Signature

Printed Name and Title

Printed Name and Title

Date

Date