



Master Services Agreement (MSA)

Parties

The Parties entering into this agreement are

City of Vicksburg (*Client*)

with headquarters located at

1401 Walnut Street, Vicksburg, MS 39180

and

InCare Technologies
(*Solution Provider*)

with headquarters located at

600 Lakeshore Parkway, Birmingham, AL 35209 USA

InCare Technologies offers a broad set of products and services to satisfy the needs of diverse clients of many sizes and across many industries and sectors. This document serves as the framework for the delivery of those services and establishes the terms and conditions under which they are delivered. In and of itself it places no obligation on the client to purchase any service or for any specific term of service.

1. Definition of Agreement

This Master Service Agreement ("MSA") serves as the master agreement for all services rendered and applies to Client's and its Affiliates' purchases from Solution Provider or any of its Affiliates of services ("Services"), as well as licenses for software, hardware, support and maintenance services, and/or subscription services (collectively, "Products"). For purposes of this Agreement, "Affiliate" means any entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with Client or Solution Provider, as the case may be. Products provided under this MSA will be pursuant to Solution Provider's written or electronic order form, and Services will be provided pursuant to a Statement of Work or Addendum (each, an "Order") all of which must be executed by both parties. This MSA is the exclusive statement of the agreement of the parties with respect to its subject matter and supersedes all prior agreements, negotiations, representations, proposals, and awards, written or oral, relating to its subject matter.

2. Term of Agreement and Termination

This MSA is effective upon the date signed and shall remain in force for the longer of the following 1) the original or renewal term of any Order; OR 2) if no Orders are outstanding, until either party gives the other sixty (60) days' prior written notice of its intent to terminate this MSA.

- a. If either party terminates this MSA, Solution Provider will assist Client in the orderly termination of services, including timely transfer of services to another designated provider. Client agrees to pay Solution Provider the actual costs of rendering such assistance.
- b. Individual Orders may carry their own term and/or termination procedures that apply to that specific contracted service or engagement, and in such case, such term and procedures shall govern that Order only.

3. Taxes

It is understood that Services and Products are generally proposed exclusive of any Federal, state or local taxes, as applicable, which shall be added to each invoice for services or materials rendered under this MSA. Client shall pay any such taxes unless a valid exemption certificate is furnished to Solution Provider for the state of use.

4. Return Merchandise Authorization (RMA Policy)

Only direct customers/original purchasers of InCare Technologies can request/process a RMA. Client should call 205-277-2273 and request assistance from the Warehouse Department.

- Prior to shipment of a return item to InCare Technologies., an RMA number must be acquired from InCare Technologies.
- The pre-approved **RMA number must be marked clearly visible on the outside of the return packaging, preferably on the shipping label and on the packing list.**
- Purchasers' account must be current and have all payments cleared with InCare's bank for an RMA shipment to be accepted, unless the RMA was approved as a return for credit against Purchasers' account.
- InCare reserves the right to inspect and test all returned products; no repair, replacement or exchange will be provided if the returned products were found to meet the functionality of InCare's specifications.
- A 20% restocking fee may be charged on any hardware, accessories, peripherals, parts and on electronically delivered software that has not been downloaded. If merchandise is defective or return is a direct result of an InCare error or manufacture failure, the restocking fee will not apply.
- All RMA items must be shipped freight pre-paid by the customer. Furthermore, the customer is expected to insure all items being shipped back. InCare is not responsible for any losses or damages for such equipment.
- RMA's will be shipped back to customer in the same or similar manner as they were shipped to InCare.
- RMA processing may take up to 2 weeks.
- All RMA's must be accompanied with a packing slip indicating an itemized list of the returned items and the name, return address and phone number of the customer contact.

Discrepancy & Shipping Damage

- For wrong or missing items, shipping damage, or other shipment discrepancies, the customer should report these items immediately to their sales representative. Any claims of wrong or missing items after seven (7) business days from date of receipt will not be honored.
- For shipping damage, the customer must contact their sales representative immediately. All items are shipped insured, thus must be reported for coverage.
- Customer is responsible for paying any freight charge caused by refused shipment or unclaimed goods. Any potential charges will be reviewed on a case by case.
- InCare will make every reasonable effort to deliver on time, however, InCare shall not be liable for late or lost shipments.

Customer's Responsibility

- Customer should inspect all packages for damage and discrepancies upon receipt.
- For wrong items, missing items, and shipping damage; customer should report to their sales representative on the day in which the items were received. Any claims after seven (7) business days from receipt will not be honored.
- Always inspect each item for physical damage, missing documentation, etc.
- Customer should always provide a detailed & specific description of problems for defective items.

5. Allocation of Risk

Although the Solution Provider strives to perform its services with excellence and in accordance with established industry practices, Client understands that the many variables, multiple vendors, and dynamic nature of information technology make it impossible to unequivocally guarantee a specific outcome. Based on the understanding of this fact Client accepts the following allocation of risk.

- a. **Mutual Indemnity:** Each party will indemnify, defend, and hold harmless the other party from all claims, liabilities or expenses for physical damage to real property or tangible personal property and bodily injury, including death, to the extent caused by the gross negligence of the indemnifying party's employees arising out of this MSA and while at the Client's premises. The foregoing indemnities are contingent upon the party seeking indemnity giving prompt written notice to the indemnifying party of any claim, demand or action, and cooperating with the indemnifying party in the defense or settlement of any such claim, demand or action.

- b. **Force Majeure & Malicious Acts**

This agreement is designed to cover the support needs of the Client during normal operating conditions. The Solution Provider shall not be liable for damages, delay, or default in performance if such delay or default is caused by conditions beyond its control including, but not limited to, acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections, fire, flood, electrical surges, deliberate malicious acts, theft, and/or any other cause beyond the reasonable control of either party.

6. All Necessary Rights

If, as part of Solution Provider's performance of Services, Solution Provider is required to use, copy or modify any third party system (hardware, software, or other technology) provided or licensed to Client, then prior to Solution Provider's performance of such Services, Client will acquire all rights necessary for Solution Provider to perform such Services. Additionally, by providing access, content or information to Solution Provider, Client is warranting to Solution Provider that Client has the rights and permission to grant such access or the use of such content. Client shall indemnify and hold Solution Provider harmless for any claim arising out of or relating to a breach of this warranty.

7. Equipment & Facilities

The Client agrees that the Solution Provider may utilize certain items of the Client's equipment and may require access to certain Client facilities. The Client retains title and ownership in all of the Client's equipment owned by the Client and utilized by the Solution Provider and grants authority for the Solution Provider to access the Client's equipment and facility. Facility access may be rescinded or denied for any reason at any time; however, if access to equipment or facilities is denied, the Client understands that the Solution Provider may be unable to perform their duties adequately. If such a situation should exist, the Solution Provider will be held harmless and will be released from any warranty.

8. Recruiting Expense

The Solution Provider strives to maintain the best technical and other available talent in the area to service our clients. The Client understands that in order to achieve this goal, the Solution Provider makes a substantial investment, both direct and indirect, in the recruiting, training, and retention of its team members. Because the Client understands and values this investment by the Solution Provider, should the Client employ any of the Solution Provider's current or previous employees at any time within a period of six (6) months from their last date of employment with Solution Provider, Client agrees to pay Solution Provider a recruiting fee to help offset these expenses. This recruiting fee shall be equal to fifty percent (50%) of the employee's first-year salary with the Client in the case of employment. Solution Provider may, at its sole option, waive or reduce this recruiting fee based on circumstances and/or mutually agreed upon negotiation.

9. Miscellaneous / Other Provisions

- a. **Payments:** All payments are due and payable upon receipt of the Solution Provider's invoice. Amounts unpaid forty-five (45) business days after the date of the invoice shall bear interest at the rate of one and one-half percent (1.5%) per month. Solution Provider reserves the right to suspend any services until such unpaid amounts are paid in full. For any unpaid balances resulting in collection efforts by the Solution Provider, the Client agrees to pay any and all actual collection costs, court costs, and actual and reasonable attorney's fees.
- b. **Creative Works:** Unless expressly superseded by a specific Order executed by the Solution Provider and the Client, all proposals, creative and custom works performed by the Solution Provider, including their code, documentation, appearance, structure, and organization, are proprietary products of the Solution Provider and are protected by copyright and other laws. Title to the works, or any copy, modification, or merged portion of the works, shall at all times remain with the Solution Provider.
- c. **Severability:** The Client and the Solution Provider agree that in the event any term, covenant, or condition herein contained is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant, or condition shall in no way affect any other term, covenant, or condition herein contained.
- d. **Titles:** Headings, titles and paragraph captions are inserted in the MSA for convenience, are descriptive only, and shall not be deemed to add to or detract from or otherwise modify the meaning of the paragraphs.
- e. **Notices:** Unless otherwise provided, notices to either party will be in writing to the address indicated above, or as later amended, and deemed effective when received.
- f. **Assignment:** Client may not assign this MSA or any rights granted in this MSA to any non-affiliated third party, except with the prior written consent of Solution Provider.
- g. **No Waivers:** Failure of a party to require performance by the other party under this MSA, will not affect the right of such party to require performance in the future. A waiver by a party of any breach of any term of this MSA will not be construed as a waiver of any continuing or succeeding breach.
- h. **Modification:** This MSA, and each Order, may be modified only in a mutually signed writing between Client and Solution Provider. In the event of a conflict between this MSA or an Order, the terms of the Order will control, followed by the terms of this MSA.
- i. **Superseding Terms:** Client agrees that the terms of this MSA supersede any terms or conditions included in purchase order, purchase contract, or other document or instrument of purchase provided by Client to Solution Provider.
- j. **Referencing:** Client agrees that Solution Provider and its Affiliates may refer to Client as a customer of Solution Provider, both internally and in externally published media.
- k. **Survival:** Sections 4, 5, 7, 8 and 9, will survive the termination or expiration of this MSA.
- l. **e-Discovery:** Should client request or should solution provider be compelled by court order to provide information or testimony in regards to litigation in which client is a party, client agrees to indemnify solution provider and to reimburse solution provider for any legal expenses it might incur in the process of responding to such request or subpoena. Client also agrees that it will reimburse solution provider for any professional services time required to gather and convey the requested or subpoenaed information at the rates outlined in solution provider's prevailing professional services rate schedule. Client further agrees that it alone is responsible for notifying solution provider should a litigation hold or any other special actions be required with regards to any client information that Solution Provider may manage or hold in connection with any litigation in which client is a party except in the case in which Solution Provider is itself served with a subpoena or court order in which case solution provider will take whatever steps it feels is necessary to comply with its obligation therein.

This MSA is executed under the laws of the State of Mississippi, United States of America, and the Parties hereto stipulate and submit themselves to the jurisdiction of the Mississippi courts, and that the laws of the State of Mississippi (excluding

any conflicts of law provisions) shall govern any controversy hereunder. TO THE EXTENT EITHER PARTY SHALL SEEK RELIEF FROM A COURT OF COMPETENT JURISDICTION FOR ANY CLAIM OR DISPUTE, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY COURT IN ANY ACTION FOR THE ADJUDICATION OF SUCH CLAIM OR DISPUTE.

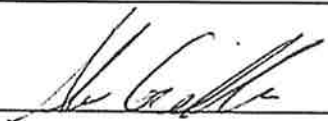
Signatures

By signing this MSA, the parties hereto agree to all terms, conditions and covenants contained herein and that they are authorized to make such decisions for their respective organizations. The parties acknowledge that this is a legally binding contract, and the parties fully acknowledge that they each have accepted this contract of their own free will and that the signing of this document was not the result of coercion or duress and that both parties sought and received, or had the opportunity to seek and receive, the advice of legal counsel of their choice prior to signing this MSA.

IN WITNESS WHEREOF, the parties hereto have caused this MSA to be signed by their duly authorized representatives as of the date set forth below.

InCare Technologies**City of Vicksburg**

Signature: _____



Signature: _____

Name: _____

Alan Gilliam

Name: _____

Title: _____

V.P. of MS Operations

Title: _____

Date: _____

3/5/18

Date: _____