

# Manifest Interactive

MASTER AGREEMENT FOR SERVICES

May 5, 2010 | Revision 1.0



**THIS MASTER AGREEMENT FOR INFORMATION TECHNOLOGY SERVICES** (this "Agreement") is made as of Wednesday, May 05, 2010 by and between MANIFEST INTERACTIVE, LLC., an Oregon corporation having a place of business at 3439 NE Sandy Blvd #283, Portland, OR 97213, as hereinafter defined (collectively "Vendor") and Company ABC, having its principal place of business at 123 Any Street, Anywhere, State ("Customer").

**WHEREAS**, Customer desires to retain Vendor to perform certain professional services in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, Vendor desires to perform such services in accordance with the terms and conditions of this Agreement;

**NOW, THEREFORE**, in consideration of the promises exchanged in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge the parties agree as follows:

- 1. Purpose and Scope of Agreement.** The purpose of this Agreement is to set forth the terms and conditions under which Vendor will provide professional services to Customer. This Agreement covers all services and work provided or produced by Vendor pursuant to any statement of work ("Statement of Work" or "SOW") executed by both parties during the term of this Agreement. An Affiliate of Customer may purchase Services (as defined below) hereunder by entering into a Statement of Work with Vendor as set forth in Section 2. After the Affiliate and Vendor have signed the Statement of Work, the Affiliate identified therein will be bound by the terms and conditions of this Agreement for purposes of such Statement of Work only. All references in this Agreement to "Customer" will mean an Affiliate that purchases Services as described in this paragraph. Vendor shall only be liable under each Statement of Work to the Affiliate or Affiliates who have executed the Statement of Work with Vendor.

2. **Statement of Work.** Customer and Vendor shall jointly prepare a Statement of Work using a copy of the form attached as Exhibit A or comparable document whenever Customer wishes to assign a task or project to Vendor. At a minimum, each SOW shall provide the following information (if applicable):

- 2.1. The name, address, telephone, fax and cell numbers of the Customer employee assigned to manage the project for Customer (the "Customer Representative");
- 2.2. The name, address, telephone, fax and cell numbers of the Vendor employee assigned to manage the project for Vendor (the "Vendor Representative");
- 2.3. A description of the services to be performed by Vendor (the "Services");
- 2.4. A description of the deliverables to be delivered by Vendor (the "Deliverables");
- 2.5. A description of any acceptance tests or standards applicable to the Deliverables;
- 2.6. Either a fixed price or a good faith estimate of Vendor's charges for performance of the Services, including a description of the assumptions on which any estimate is based;
- 2.7. A list of any expenses (or type of expenses) for which Vendor will be reimbursed by Customer (the "Reimbursable Expenses");
- 2.8. A proposed project schedule;
- 2.9. Customer's responsibilities; and
- 2.10. Any special terms and conditions that shall apply to the performance of the Services.

After both parties have signed the SOW, that SOW shall be incorporated into and made a part of this Agreement, and all of the terms and conditions of this Agreement shall apply to the performance of the Services described in that SOW, except that any terms and conditions expressly set forth in that SOW that conflict with the terms of this Agreement shall govern over the terms and conditions set forth in this Agreement. Any such conflicting terms and conditions shall apply only to the Services described in that particular SOW and shall have no application to Services provided by Vendor pursuant to other SOWs. Vendor shall have no obligation to perform and Customer shall have no obligation to pay Vendor for any Services not within the scope of an executed SOW.

3. **Cost Estimate And Proposed Schedule.** Any cost estimate (as opposed to a fixed price) and any proposed schedule set forth in any SOW shall be made in good faith based upon the information available to Vendor at the time the SOW was accepted and the assumptions stated in the SOW. Vendor shall use its best efforts to perform the Services at or below the estimated cost and in accordance with the proposed schedule. Vendor shall promptly notify Customer of any new information, changed assumptions or other circumstances that could or will affect the cost estimate or the proposed schedule and that could not reasonably have been anticipated at the time the SOW was executed. Upon Customer's receipt of such notice (and provided Customer does not elect to terminate the SOW pursuant to Section 15 of this Agreement), the parties shall promptly execute an amended SOW revising the description of the Services and/or the estimated cost of the Services and/or the proposed schedule in a manner that is acceptable to both parties. Customer shall have no obligation to pay amounts in excess of 110% of the cost estimate set forth in any SOW, unless Vendor has provided Customer written notice of the changed circumstances giving rise to the increased cost of the project and Customer has been given the opportunity to amend or terminate the SOW as provided in this Section.
  
4. **Changes Initiated by Customer.** If Customer desires to make any changes in the scope of Services or the schedule during the performance of a SOW, Customer shall discuss the change with Vendor and Vendor shall provide Customer with (i) a written description of the proposed change, any impact it may have on price, and any impact it may have on the project schedule, and (ii) a revised SOW. Customer may accept or reject the revised SOW. If accepted, and signed by both parties, the revised SOW will supersede the previous SOW.

5. **Payment.** Customer shall pay Vendor for the Services provided by Vendor at the rates or as otherwise set forth in the applicable SOW. In addition, Customer shall reimburse Vendor for any reasonable expenses directly incurred in the performance of the SOW of the type(s) listed in the SOW as "Reimbursable Expenses" and for any other expenses approved in writing by Customer. Customer shall pay invoices submitted in accordance with Section 6 of this Agreement within thirty (30) days of Customer's receipt of such invoices and agrees to pay a finance charge of 1.5% per month, or the highest rate permitted by applicable law, if less, on all overdue charges. Invoices more than 90 days past due will be referred to a collection agency or attorney for collection. Customer agrees to pay reasonable collection agency and attorney fees related to collection of past due invoices.
  
6. **Invoicing.** Vendor shall invoice Customer monthly for Services rendered if no other payment schedule was agreed upon in SOW. Each invoice shall identify the project by the date and number of the SOW. The invoice shall show (a) the names of the person(s) working on each task, and (b) if Vendor is being paid an hourly rate, the applicable hourly rates and the number of hours each person worked on each task. Reimbursable Expenses shall be itemized and accompanied by reasonable backup documentation.
  
7. **Confidentiality.** The parties have executed a separate Non-Disclosure Agreement dated as of Wednesday, May 05, 2010 (the "NDA"), attached hereto as Exhibit C, the terms of which are hereby incorporated by reference. The parties acknowledge and agree that the NDA is in full force and effect and shall apply to their dealings with each other pursuant to this Agreement and any SOWs governed by this Agreement. Vendor shall not exercise its right under the NDA to terminate the NDA while any SOW remains uncompleted and outstanding. As used in this Agreement, the term "Confidential Information" shall have the meaning ascribed to it in the NDA.

## 8. Independent Contractor Relationship.

- 8.1. Independent Contractor Relationship. Vendor is an independent contractor and not an employee, agent, fiduciary, joint venture or partner of Customer. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Customer and Vendor or any employee, subcontractor or agent of Vendor (collectively, "Vendor's Personnel").
- 8.2. Method of Performing Services. Vendor shall determine the method, details, and means of performing the Services. Customer shall have no right to, and shall not, control the manner or determine the method of accomplishing the Services. Customer may, however, require Vendor's Personnel at all times to observe its security and safety policies. In addition, Customer shall be entitled to exercise a broad general power of supervision and control over the results of the Services performed by Vendor to assure satisfactory performance, including the right to inspect and test, the right to stop work, the right to make suggestions or recommendations as to the details of the Deliverables, and the right to request modifications to the scope of the SOW.
- 8.3. Vendor's Personnel Are Not Agents of Customer. Neither Vendor nor any of Vendor's Personnel shall have the right to make representations on behalf of Customer, execute or make contracts in the name of Customer, or obligate Customer in any way. Vendor shall ensure that Vendor's Personnel are aware that they are not agents, employees, and/or legal representatives of Customer and may not represent themselves as such.
- 8.4. Agreement Is Non-Exclusive. Customer does not agree to use Vendor exclusively or to provide any minimum amount of work. Vendor and any of Vendor's Personnel are free to contract to perform services for others during the term of this Agreement, subject to the obligations of confidentiality described in Section 7 of this Agreement and Customer's proprietary rights as set forth in Section 9 of this Agreement.

- 8.5. Compensation of Vendor’s Personnel. Vendor shall bear sole responsibility for payment of compensation to Vendor’s Personnel. Vendor shall pay and report all state and federal income tax withholding, social security taxes, and unemployment and workers’ compensation insurance applicable to Vendor’s Personnel. Vendor shall bear sole responsibility for any health or disability insurance, retirement benefits or other welfare or pension benefits (if any) to which Vendor’s Personnel may be entitled.
- 8.6. Customer Has No Obligation to Provide Benefits to Vendor’s Personnel. Vendor agrees and acknowledges that Customer has no obligation whatsoever to provide liability, life or health insurance, or any other benefit of whatever nature, including without limitation retirement benefits (collectively “Benefits”) provided to Customer’s employees for Vendor or Vendor’s Personnel, and neither Vendor nor any of Vendor’s Personnel shall claim benefits under applicable unemployment or workers’ compensation laws from Customer for any injuries sustained by Vendor or any of Vendor’s Personnel while performing the Services. Vendor is solely responsible for providing Benefits that Vendor’s Personnel might claim as the result of the provision of Services. Vendor shall defend, indemnify and hold Customer harmless for any claims made by Vendor’s Personnel for or in relation to such Benefits.
- 8.7. Warranties With Respect to Vendor’s Personnel. Vendor warrants that it is now, and shall remain throughout the term of this Agreement, in compliance with all laws, rules, regulations and requirements of any governmental authority having appropriate jurisdiction with respect to Vendor’s Personnel (including, without limitation, all immigration, taxation, worker compensation and unemployment compensation laws) and with any contractual obligations to which it may be subject relating to Vendor’s Personnel.

## 9. Ownership.

9.1. Definition of "Work." As used in this Agreement, the term "Work" means all computer code or program, whether in the source code or object code version, together with and including any derivative works, algorithm, flowchart, schematic, diagram, specification, annotation, or other documentation connected therewith; all works of authorship, inventions, innovations, concepts, designs, processes, techniques, products, know-how whether or not copyrightable, or patentable "thing" that Vendor, solely or jointly with Customer, creates, develops or reduces to practice in connection with its performance of Services.

9.2. Work Owned by Customer. The parties agree that all Work shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the Copyright Act of 1976, 17 U.S.C. § 101 and Customer shall own all right, title and interest therein. Without limiting the foregoing, Customer shall be considered the author of the Work for purposes of copyright and shall own all the right in and to the copyright of the Work, and only Customer shall have the right to copyright the same, which Customer may do in Customer's name or in the name of Customer's nominee(s). To the extent the Work or any part thereof does not vest in Customer by reason of being a work-made-for-hire under 17 U.S.C. § 101, Vendor hereby irrevocably grants, assigns and transfers to Customer all right, title and interest in and to the Work including, but not limited to, all copyrights, patent rights, trade secrets and all other worldwide intellectual property rights inherent therein or appurtenant thereto. Customer shall have the sole and exclusive right throughout the universe in perpetuity to use and exploit all or any part of the Work in any format or version, by any means and in any and all media, whether now known or hereafter developed. Without limiting the foregoing, Vendor hereby waives any and all claims that Vendor may now or hereafter have in any jurisdiction to so-called "moral rights" with respect to the results and proceeds of Vendor's work and Services hereunder. Vendor shall disclose promptly any and all Work to Customer and furnish promptly to Customer any instruments that

Customer may from time to time reasonably request to evidence, establish, maintain or protect Customer's rights in and ownership of the Work. Without limiting the foregoing, Vendor will assist Customer, at Customer's expense, in obtaining patents, copyrights, or proof of exclusive ownership in any and all countries in the Work. Vendor shall bind its subcontractors and agents and secure assignments in connection with the Services in compliance with Section 9.5.3(ii). Nothing in this Section 9.2 shall relieve Customer of the obligation to pay Vendor's invoices for the Services resulting in the Work.

- 9.3. Pre-Existing Rights; Work Papers. Notwithstanding anything to the contrary set forth in this Agreement, any computer code, routines, libraries, tools, methodologies, processes, techniques, algorithms, concepts, know-how, sequences or other intellectual property acquired or developed by Vendor prior to or independently of its performance of Services pursuant to this Agreement (the "Vendor Intellectual Property") shall be and shall remain the sole property of Vendor and shall not be assigned to Customer pursuant to this Agreement. If any part of the Work or a Deliverable contains any of the Vendor Intellectual Property, Vendor hereby grants to Customer an irrevocable, perpetual, non-exclusive, worldwide, fully paid-up license to use, execute, reproduce, make, display, perform and distribute (internally and externally) copies of and prepare derivative works based upon such Vendor Intellectual Property solely in connection with the applicable Work or Deliverable and to authorize others to do any of the same. Except as provided by this Agreement, Customer agrees not to otherwise sublicense or grant any other party any rights to use, execute, reproduce, make, display, perform, distribute, copy or otherwise exploit or create derivative works from Vendor Intellectual Property. If any part of a Deliverable contains any of the Vendor Intellectual Property, Vendor shall disclose promptly any and all such Vendor Intellectual Property to Customer and furnish promptly to Customer any instruments that Customer may from time to time reasonably request to evidence, establish, maintain or protect Customer's rights under the license granted in

this Section 9.3.

Notwithstanding anything to the contrary set forth in this Agreement, Vendor's Work Papers shall not constitute Works or Deliverables and shall remain the sole property of Vendor, provided that any Customer Confidential Information contained or reflected in the Work Papers shall remain the sole property of Customer. As used herein, "Work Papers" shall mean those internal memoranda and working notes prepared by Vendor during the course of performing Services hereunder that serve as the basis for or to substantiate the Services and/or any Works and Deliverables.

9.4. Residuals. Notwithstanding anything to the contrary set forth in this Agreement, Vendor and Vendor's Personnel shall be free to use and disclose any generalized skills, know-how, expertise, methods, or techniques gained or learned during the course of the performance of the Services; provided that Vendor and Vendor's Personnel do so without any unauthorized use or disclosure of Customer's Confidential Information.

9.5. Vendor Warranties. Vendor warrants that

9.5.1. It is free of any obligation or restriction that would prevent it from entering into this Agreement or impede its performance hereunder;

9.5.2. Vendor's performance under this Agreement has not and will not involve the unauthorized use or disclosure or any trade secret or confidential information of any third party or the infringement of any patent, copyright or other intellectual property rights of any third party;

9.5.3. All persons who perform any portion of the Services at the direction of Vendor are and will be either:

- (i) Vendor's W-2 employees, acting as employees within the meaning and purview of the “work made for hire” provisions of the copyright laws of the United States of America; or
- (ii) Vendor's subcontractors and doing so pursuant to, among other agreements, written agreements with Vendor in the form attached to this Agreement as Exhibit B, confirming and effecting an assignment of all rights in and to the Work to Customer.

9.5.4. Each of Vendor’s employees has entered into an enforceable contract with Vendor containing standard confidentiality provisions protecting the Confidential Information and an assignment of all of such employee’s intellectual property rights in and to the Work sufficient to permit Vendor to convey all right, title and interest in the Work on the terms set forth in this Section 9.

9.6. Indemnification. Vendor shall defend, indemnify and hold Customer, its directors, officers, employees, agents, and affiliates, harmless from and against any and all losses, liabilities, judgments, awards, settlements, damages, costs and expenses, including without limitation, reasonable attorneys’ fees and expenses and costs of suit, arising out of or related to any claim that the Services performed pursuant to this Agreement infringe upon any trademark, copyright, patent, trade secret or similar intellectual property right of any third party; provided that Customer notifies Vendor promptly in writing of the claim. Customer may, at its own expense, assist in the defense if it so chooses; provided, however, that Vendor shall have sole control of the defense of any such claim and all negotiations for its settlement or compromise and

provided further that any settlement intended to bind Customer, its directors, officers, employees, agents or affiliates, shall not be final without Customer's written consent. Customer shall cooperate fully with Vendor in such defense, provided that Vendor shall pay all attorneys' fees and other costs incurred by Customer in connection with such cooperation, except attorneys' fees of any counsel separately retained by Customer to monitor or assist in the defense. Vendor shall have no obligation or liability for any claim based upon or resulting from (i) modification of the Services, Works or Deliverables, unless the modification was made by Vendor, with Vendor's approval, or at its direction; (ii) the use, operation or combination of the Services, Works or Deliverables with non-Vendor programs, data, equipment or documentation if such infringement would have been avoided but for such use, operation or combination, or if such use, operation, or combination of Services is at the direction of Vendor; (iii) the non-compliance by Customer with Vendor's designs, specifications or user documentation; or (iv) information, direction, specifications or materials provided solely by Customer. This Section 9.6 sets forth Customer's exclusive remedy and the entire liability of Vendor with respect to infringement of any intellectual property rights, whether under theory of indemnity, breach of contract, warranty or otherwise.

**10. Ownership of Materials Provided by Customer.** All documents, data, text, graphics, illustrations, audio, video, audio video and other materials provided to Vendor by Customer on or in any format or media (collectively, "Customer's Materials") are and shall remain exclusively the property of Customer. Upon completion of Vendor's performance of Services under any SOW or upon the earlier termination any SOW as provided herein, Vendor shall promptly deliver to Customer all such Customer Materials in Vendor's possession, including all complete or partial copies, recordings, abstracts, notes or reproductions of any kind made from or about such Customer Materials or information contained therein. Vendor will not keep copies of any Work prepared or Customer Materials received under this Agreement without the prior written consent of Customer. Notwithstanding the foregoing or anything

herein to the contrary, Vendor shall not be required to deliver its Work Papers to Customer and shall be permitted to retain within the Work Papers such information provided by Customer, including Confidential Information, as is necessary to substantiate the Services, Works and/or Deliverables, subject to Section 7 of this Agreement and the NDA.

11. **Other Warranties.** Vendor warrants that (a) all Services, whether rendered by Vendor or a subcontractor thereof, will be rendered using sound and professional practices in a competent and professional manner by knowledgeable, trained and qualified personnel; (b) all Services, whether rendered by Vendor or a subcontractor thereof, shall be performed in compliance with all applicable federal, state and local government laws, regulations, and requirements; (c) the Deliverables shall be designed, developed and as delivered will operate in accordance with the specifications, terms and conditions set forth in the applicable SOW in all material respects.

12. **DISCLAIMER OF IMPLIED WARRANTIES.** THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, IN FACT, ARISING BY OPERATION OF LAW OR OTHERWISE, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT AND DESIGNATED AS REPRESENTATIONS OR WARRANTIES. THE PARTIES AGREE SPECIFICALLY THAT THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

13. **LIMITATIONS ON LIABILITY.** EXCEPT WITH RESPECT TO LIABILITY ARISING FROM A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER OR OUT OF CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE, IN NO EVENT SHALL A PARTY BE LIABLE TO THE OTHER PARTY FOR (a) ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH SUCH PARTY'S PERFORMANCE OR OBLIGATIONS UNDER OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS OR REVENUES OR LOSS OF DATA, EVEN IF SUCH PARTY IS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER CLAIMED UNDER CONTRACT, TORT OR ANY

OTHER LEGAL OR EQUITABLE THEORY. EXCEPT WITH RESPECT TO LIABILITY ARISING FROM A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER OR OUT OF CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE, THE PARTIES HEREBY EXPRESSLY AGREE THAT THE MAXIMUM AGGREGATE LIABILITY OF A PARTY (INCLUDING UNDER SUCH CIRCUMSTANCE FOR LIABILITIES THAT OTHERWISE WOULD HAVE BEEN LIMITED) SHALL NOT EXCEED THE AGGREGATE FEES PAID OR DUE BY CUSTOMER TO VENDOR PURSUANT TO THE APPLICABLE SOW.

14. **Insurance.** Vendor shall maintain (and cause its subcontractors, if any, to maintain) the following insurance coverage's in full force and effect throughout the term of this Agreement:
- 14.1. Workers' Compensation Insurance as may be from time to time required under applicable federal laws and the laws of the state(s) or country in which the Services are performed.
  - 14.2. Employer's Liability Insurance with limits of not less than \$1,000,000 each accident, \$1,000,000 disease – policy limit, and \$1,000,000 disease – each employee.
  - 14.3. Commercial General Liability Insurance (including contractual liability to cover the indemnity provisions set forth in this Agreement) with limits of not less than \$5,000,000 general aggregate and \$5,000,000 each occurrence (including personal and advertising injury).
  - 14.4. Automobile Liability Insurance (including non-owned and hired) with limits of not less than One Million Dollars (\$1,000,000) combined single limit.

The foregoing insurance shall contain a provision whereby the insurer agrees to give Customer thirty (30) days' written notice before the insurance is canceled or altered in such a way that it no longer satisfies the requirements set forth in this Section. The foregoing insurance shall be written on an occurrence basis and, except with respect to the Workers' Compensation

Insurance, shall include Customer as an additional insured. Vendor shall furnish current certificates evidencing that the foregoing insurance is being maintained by Vendor. Delivery of a certificate to Customer which is not in full compliance with this Agreement shall not be deemed to waive Vendor's obligations. All of the insurance policies required to be obtained pursuant to this Agreement shall be with companies licensed to do business in the state where the Services will be performed and rated no less than X as to financial rating and no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated).

## 15. Term and Termination.

- 15.1. Term of Agreement. This Agreement will become effective on the date first shown above and shall remain in effect through the completion of each SOW.
- 15.2. Termination of SOW by Customer. Customer may terminate any SOW, with or without cause and at its sole discretion, upon ten (10) business days' prior written notice to Vendor.
- 15.3. Termination of SOW by Vendor. If Customer breaches this Agreement with respect to any SOW, then Vendor may terminate such SOW upon thirty (30) calendar days written notice to Customer, but only if Customer fails to cure such breach within said thirty-day period.

- 15.4. Obligations upon Termination of SOW. Upon the termination of any SOW, Vendor shall advise Customer of the extent to which performance has been completed through such date, and collect and deliver to Customer whatever work product then exists in the manner requested by Customer. Customer's sole obligation to Vendor upon the termination of any SOW shall be to pay Vendor for (i) all hours worked prior to the date of termination and (ii) such Reimbursable Expenses as Vendor has actually incurred prior to the date of termination.
- 15.5. Termination of Agreement. Either party may terminate this Agreement upon written notice to the other party at any time that there is no uncompleted SOW outstanding.
- 15.6. Immediate Termination. Either party may terminate this Agreement and all outstanding SOWs immediately upon notice in the event any assignment is made by the other party for the benefit of creditors, or if a petition in bankruptcy is filed by or against the other party, or if a receiver or similar officer is appointed to take charge of all or part of the other party's property, or if the other party is adjudicated a bankrupt.

**16. Miscellaneous.**

- 16.1. Force Majeure. Any delay or failure of performance of either party to this Agreement shall not constitute a breach or default of the Agreement, or give rise to any claims for damages, if and to the extent that such delay or failure is caused by an occurrence beyond the control of the party affected, including, but not limited to, acts of governmental authorities, acts of God, the discovery of materially different site conditions, wars, riots, rebellions, sabotage, fire, explosions, accidents, floods, strikes, lockouts, or changes in laws, regulations, or ordinances. In the event that a party intends to invoke this force majeure provision, that party shall provide prompt notice to the other party as soon as possible after the occurrence of the event giving rise to the claim of force majeure.

16.2. Notice. All notices, demands and requests required or permitted to be given under this Agreement or any SOW shall be in writing and delivered (a) personally or by local courier, (b) by a nationally recognized overnight courier or (c) sent by United States certified mail, return receipt requested, postage prepaid and addressed to the parties at their respective addresses set forth below (or at the address set forth on the applicable SOW). Notices shall be effective upon receipt. The initial addresses of the parties shall be:

To Vendor: Manifest Interactive, LLC  
3439 NE Sandy Blvd #283, Portland, OR 97232  
Attn: Peter Schmalfeldt  
Tel: (503) 488-5627  
Fax: (503) 208-8098

To Customer: COMPANY ABC  
123 Any Street, Anywhere, State  
Attn: Project Manager  
Tel: (123) 456-7890  
Fax: (123) 456-7890

16.3. Amendment. No amendment of this Agreement or any SOW shall be binding upon either party unless made in writing and executed on behalf of Customer and Vendor. If this Agreement is amended as provided herein, then, unless the parties otherwise agree in writing, the terms and conditions of any such amendment shall apply only to SOWs executed on or after the effective date of such amendment and not to any uncompleted SOWs that are outstanding on the effective date of such amendment.

- 16.4. Assignment. Neither party may assign, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, Customer may assign this Agreement without such consent to any Affiliate or to any successor in the event of merger, corporate reorganization, or sale of substantially all of its assets.
- 16.5. No Waiver Except as expressly set forth in this Agreement, the failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Agreement.
- 16.6. Severability. Every section, term and provision of this Agreement is severable from the others. Any future determination by a court or other authority having jurisdiction over the parties or this Agreement that a particular section, term, or provision of this Agreement is invalid, void, illegal, or unenforceable shall not affect the validity and enforceability of the remaining sections, terms, or provisions.
- 16.7. Governing Law. The validity, performance and construction of this Agreement shall be governed and interpreted in accordance with the laws of the State of Oregon.
- 16.8. Jurisdiction and Venue. Any action arising out of or relating to this Agreement, its performance, enforcement or breach will be venued in a state or federal court situated in Portland within the State of Oregon. Each party hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for all such actions.

- 16.9. Entire Agreement. This Agreement contains the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all previous communications, negotiations and agreements, whether oral or written, between the parties with respect to such subject matter.
- 16.10. Authority. Customer and Vendor each warrant and represent to the other that the individuals executing this Agreement on behalf of such party have the full capacity, right, power and authority to execute and deliver this Agreement on that party's behalf and to bind that party hereto.
- 16.11. Survival. The provisions of Sections 5, 7, 8, 9, 10, 11, 12, 13, 15.4 and 16.13 and all representations, warranties, indemnities and obligations of confidentiality shall survive the termination of this Agreement.
- 16.12. Additional or Contrary Terms and Provisions, If Any. Any additional or contrary terms and provisions set forth in a rider dated as of the date of this Agreement, signed by both parties, and attached hereto shall be incorporated herein and shall govern over any contrary terms and provisions set forth above.
- 16.13. Non-Solicitation. During the term of an SOW and for a period of one (1) year thereafter, each party agrees not to solicit, hire or engage any employees of the other party who participated in performance of such SOW, without the prior written consent of such other party. This provision shall not restrict general advertisements of employment or the rights of any employee of one party, on that employee's own initiative, or in response to general advertisements, to seek employment from the other party and under such circumstances, for the other party to hire such employee.

**IN WITNESS WHEREOF**, the parties have each executed this Agreement by their duly authorized representatives on the date(s) shown below.

**MANIFEST INTERACTIVE, LLC**

**COMPANY ABC**

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**EXHIBIT A TO MASTER AGREEMENT**

STATEMENT OF WORK

(Attached)

**EXHIBIT B TO MASTER AGREEMENT**

**SUB CONTRACTOR AGREEMENT**

(Attached)

**EXHIBIT C TO MASTER AGREEMENT**

**NON-DISCLOSURE AGREEMENT**

(Attached)