



**BLACKDRAGON**  
PER UNITATEM VIS

## MASTER SERVICES AGREEMENT (MSA)

This Master Services Agreement (Agreement) is entered into on \_\_\_\_\_ (“Effective Date”) between Blackdragon, LLC (“Blackdragon”), a Virginia limited liability company with offices at 2231 Crystal Drive, Suite 1000, Arlington, VA 22202 and \_\_\_\_\_ (“Customer”), a \_\_\_\_\_ company with CAGE code \_\_\_\_\_ and primary physical offices located at \_\_\_\_\_.

In this Agreement, we sometimes refer to Blackdragon as “us” or “we” or “our” and this Agreement sometimes refers to the Customer as “you” or “your” and singularly as “Party” and together as “Parties”.

### 1. SERVICES

**Terms and Conditions.** This Agreement includes the general terms and conditions related to services that Blackdragon may provide to you. The specific services and terms for individual projects or engagements will be included and described in a separate Statement of Work (SOW) to be negotiated and agreed to by the Parties, which should reference this Agreement. Each SOW will “incorporate by reference” the applicable terms and conditions of this Agreement and be signed by the authorized signature authorities for each Party. These terms and conditions will apply to projects and engagements described in the SOW.

**Affiliates.** From time to time, an affiliate of ours may provide services by entering into a SOW with you. By entering into a SOW, an affiliate agrees to be bound by this Agreement and will be considered “us” and “we”. Affiliates may not amend, modify or change the terms of this Agreement, except as they specifically apply to their SOW. All changes will be incorporated into a modification and signed by both Parties.

### 2. FEES AND SERVICES

**SOW Fees.** For our services, you agree to pay us the fees agreed to by the Parties on an individual job basis and described in the applicable SOW agreed to and executed by the Parties.

**No Guaranty of Success.** We make no guaranty of outcome or success. You may not obtain the government or other contract that you engaged us to assist you with.

**Invoicing and Payment.** Unless we agree in a SOW to a different practice: Our invoices are due 30 days upon receipt of an invoice, unless otherwise specified in the SOW. We will invoice you electronically, via e-mail, on a monthly basis. If you do not pay an amount owed within 30 days of receipt of interest accrues on the invoice at 1.0% per month.

**Deliverables.** Our consultants provide services to help you prepare for bids on government contracts, as may be specified and agreed to in an executed SOW.

**Services.** In connection with providing services to you, we agree that:

- We will provide services to you in a professional, workmanlike manner, in accordance with the specifications and guidelines set forth in each SOW agreed to by the Parties, and in compliance with all applicable laws and regulations and professional standards.
- You agree to promptly review our deliverables and services performed by us promptly upon receipt by you.
- We will not violate or breach any third-party intellectual property rights in providing services to you.
- Our services will be free of all liens and encumbrances and there are no claims pending or threatened that could have a material adverse effect on our ability to perform our obligations under this Agreement or SOW. We will have appropriate agreements with our employees and contractors to perform our obligations under this Agreement or any related SOWs.

### **3. OWNERSHIP OF WORK PRODUCT**

All Work Product made by our consultants for you shall be considered work(s) made for hire and shall belong exclusively to you and your designees.

**Pre-Existing Materials.** Notwithstanding any provision of this Agreement to the contrary, any routines, libraries, tools, methodologies, processes or technologies created, adapted or used by either Party in its business generally, including all associated intellectual property rights (collectively, the "Development Tools") shall be and remain the sole property of the originating Party, and neither Party shall have interest in or claim to such Development Tools except as necessary to exercise its rights in the Work Product. In addition, notwithstanding any provision of this Agreement to the contrary, Either Party shall be free to use any ideas, concepts, or know-how developed or acquired by it during the performance of this Agreement to the extent obtained and retained by either Party's consultants, employees or personnel as impressions and general learning.

Subject to Customer's intellectual property rights, nothing in this Agreement shall be construed to preclude either Party from acquiring, developing, marketing, or enhancing for itself or others similar tools, techniques, methodology or technology performing the same or similar functions as the tools, techniques, methodology or technology used or created pursuant to this Agreement.

**Work Product Defined.** As used herein, the term "Work Product" shall mean any programming, documentation, data compilations, reports, and any other media, materials, or other objects produced as a result of Blackdragon and/or Customer's work or delivered by Blackdragon in the course of performing that work.

#### **4. COMPLIANCE**

**Compliance with Customer's Procedures and with applicable rules and regulations.** If Blackdragon is performing services at a Customer location, Blackdragon personnel will observe and comply with Customer's applicable procedures, rules, regulations and policies (including, but not limited to, those policies relating to health and safety), as Customer may communicate to Blackdragon in writing from time to time.

**Compliance with Applicable Law.** Both Parties will conduct business in compliance with all applicable law, rules and regulations.

At the signing of this Agreement, neither Party is debarred or otherwise restricted from participating in, or bidding for, any government contract or business. Should this change, such Party will notify the other within 10 days if you are threatened with restrictions on your capacity to bid for or participate in any government contract or business in conjunction with this Agreement.

#### **5. YOUR COMMITMENTS TO US**

**Prompt Payment of Invoices.** You acknowledge that we do not generally pay our consultants for work until you pay your invoices to us for such work. Accordingly, you agree to promptly pay our valid and accurate invoices.

**Reasonable Assistance.** You will provide us with the information, resources and assistance that we reasonably require or request in order to provide services to you.

**We May Rely on Your Information.** We may rely on the accuracy of information and data that you provide or make available to us without having to independently verify it (unless both of us agree otherwise in a SOW).

**You Are Responsible for Your Management Decisions.** You acknowledge that you are responsible for making management decisions related to the use of our consultants in your business and your use of the services we provide.

**You Agree to Monitor our Consultants and their Work Product.** You agree to monitor and review the services provided by our consultants and their work product promptly after performance or completion. You agree to bring to our attention any defects in our services or work product. promptly upon your discovery of them.

## **6. HIRING EMPLOYEES/CONSULTANTS DIRECTLY**

Blackdragon supports Customers in multiple ways that are subject to including varying aspects of professional personnel. One-way Blackdragon helps Customers is by providing access to subject matter experts in the form of consultants who work on projects or participate in creating Blackdragon products and services for the Customer to purchase. Another way Blackdragon helps Customers is, within those projects, products and services, it is common for Blackdragon recruiters to source high quality candidates for placement into proposals or to hire for the purpose of filling open personnel vacancies on contracts whether they be for direct or contingent hire

Unless otherwise agreed to in writing, the Parties hereto agree that during the term of this Agreement and for a period of one (1) year after the expiration or termination of this Agreement, neither Party shall knowingly solicit for employment or hire any person employed by the other directly working with the other Party under, and specifically identified in, a SOW pursuant to this Agreement. This provision shall not, however, prevent a Party from hiring an employee of the other Party to the extent that the subject employee has responded to a generally advertised or published vacancy announcement approached or solicited for employment by Customer.

You agree to pay us a fee of 20% of the first-year salary of any of our then current or former consultants or employees who have provided services to you within the previous 6 months that you engage or hire directly (or indirectly). The same fee arrangement shall apply to your hiring individuals who Blackdragon introduced to you by way of supporting any projects, products and services purchased from Blackdragon which may have incorporated recruiting initiatives. This excludes individuals you had an existing relationship prior to your engaging Blackdragon. You agree to pay one-half of this fee within 90 days, and the other one-half of this fee within 180 days, of the date that you hired or engaged the individual. You agree that our fee is based on the annualized salary when hired or engaged by you. This fee does not apply for services provided to you under a SOW. Either Party may hire any former consultants or employees, without paying us a fee under this paragraph, if twelve or more months have passed from the

date the former consultant or employee ceased to provide services to Blackdragon to the date that you hired him or her was employed by the other Party. The obligation in this paragraph survives the termination of this Agreement for a period of twelve months.

## **7. INDEMNIFICATION**

With the exception of the indemnity obligations and except as otherwise expressly provided herein, neither of us will be liable to the other for any indirect, incidental, consequential, special, punitive or exemplary damages arising out of or related to this agreement, including, but not limited to, those for business interruption or loss of profits, even if one of us has been advised of the possibility of these type of damages. The provisions of this paragraph shall survive termination or expiration of this agreement.

## **8. CONFIDENTIALITY**

The Parties agree that information shared between one another is confidential and subject to mutual nondisclosure agreement (MNDA) terms contained in the attached Appendix A. The MNDA is considered part of this Agreement as Attachment A. If the provisions of the MNDA conflict with this Agreement, the Agreement terms govern. Confidential Information includes Blackdragon and Customer Data.

## **9. TERM AND TERMINATION**

**Term.** Except as may be provided in the SOW, the term of this Agreement begins on the effective date and will continue for one year unless it's terminated earlier in accordance with this section.

**Renewal.** This Agreement will automatically renew for successive one-year terms, unless either of us provides, by written notice modification signed by the Parties to the other that the Agreement will not renew.

**Termination.** This Agreement (and any SOWs) can be terminated as follows:

**For Breach.** If one of us materially breaches any of our representations, warranties, covenants or agreements in this Agreement or a SOW or otherwise fails to perform any of our material obligations in this Agreement or a SOW, the other Party can send a written notice advising of the breach or failure and providing a 10-business day period for the breach or failure to be cured. If the breach or failure hasn't been cured within this 10-business day period, the non-breaching Party can immediately terminate this Agreement and/or the SOW. Failure to pay our invoices when due is grounds for us to terminate this Agreement and all SOWs for cause.

**For Convenience.** You may terminate this Agreement or a SOW for any reason, at any time, upon 60 days' written notice to us. We may terminate this Agreement or a SOW upon 60 business days' written notice to you. Either of us may terminate this Agreement or a SOW immediately upon written notice to the other if the other Party becomes or is declared bankrupt or insolvent; is the subject of

any proceedings related to liquidation, insolvency, the appointment of a receiver or similar person, or makes an assignment for the benefit of all or substantially all its creditors.

## **10. WARRANTY DISCLAIMER**

EXCEPT AS EXPLICITLY PROVIDED IN THIS AGREEMENT, THE PARTIES ACKNOWLEDGE THAT THEY DO NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE

## **11. LIMITATIONS ON LIABILITY**

Because of the nature of the government contracts business, we are not liable for or responsible for any technical or other errors in a proposal, even if we take lead responsibility for a proposal. If we are notified of an error on a proposal, we will use reasonable efforts to correct such error, but we make no guaranty with respect to such efforts or to the proposal. If the government issues an evaluation notification or similar notice of error asking for a correction after the submission of a proposal for which we had lead responsibility, we will promptly correct such error without additional charge. Where we have not assumed lead responsibility for a proposal (e.g., we provide one consultant on a multi-person bid team), we do not assume the obligation to correct a proposal in response to an evaluation notification or similar notice, unless and to the extent we made errors referenced in the evaluation notification or similar notice.

## **12. IMPACT OF TERMINATION**

If a SOW is terminated:

- We agree to promptly return to you any confidential information in our possession or control and any records, notes, data, memoranda, models or equipment of any nature that are in our possession or control and which are your property or relate to your business. However, for archival purposes, we may keep one copy of materials necessary to explain our analysis contained in any of our deliverables and we agree to promptly deliver to you any deliverable or portion of a deliverable that has been created as of the date of termination;

- We agree to provide reasonable assistance and cooperation to you in connection with any planned transition of the services by you to another third party and will promptly provide information and responses to support such transition; and
- All other rights and obligations of each of us in this Agreement and the related SOW will terminate, except each of our rights and obligations which are intended to survive the Agreement termination or expiration will survive.

### **13. GENERAL PROVISIONS**

**Entire agreement.** This Agreement, together with the MNDA in Attachment A and any SOWs, and any other Agreement attachments, forms the complete and entire agreement between us regarding the services. This Agreement replaces and supersedes any prior agreements and understandings (oral or written) regarding the services.

**Assignment.** Neither Party can assign its rights or obligations under this Agreement without the other's prior written consent. However, prior written consent is not required if Customer assigns this Agreement, or a portion thereof, to one of its affiliates or to a third-party successor-in-interest. This Agreement is binding upon the Parties' respective successors and permitted assigns.

**Amendment.** To amend the terms of this Agreement, both of us must agree in writing to do so via our authorized representatives.

**Waiver.** If one of us does not enforce a breach of this Agreement or a SOW, it is not considered to be a waiver. If one of us waives a breach or obligation of the other Party, then the waiver needs to be signed in writing by the Party granting the waiver.

**Excusable delay.** Neither of us will be liable to the other if one of us fails to meet our obligations due to causes beyond our reasonable control, so long as the non-performing Party makes commercially reasonable efforts to resume performance as soon as possible. If the non-performing Party cannot resume performance within seven days, then the other Party may, without penalty or liability, terminate this Agreement upon written notice.

**Independent contractor relationship.** By signing this Agreement, we both agree that we are an independent contractor and not an employee, fiduciary or partner of the other Party. Neither of us has the right to bind the other.

**Attorneys' Fees.** In any litigation between the Parties relating to this Agreement or any SOW or the performance thereof, the prevailing Party shall be entitled to reasonable attorneys' fees

and expenses.

**Special U.S. Government Provisions.** In connection with our performance under this Agreement, we agree to comply with the provisions of the Federal Acquisition Regulations (“FAR”) which follow, as well as those provisions of FAR 52.244-6 (available at [www.acquisition.gov/far](http://www.acquisition.gov/far)), as applicable. Specifically, we agree to comply with the following regulations, as applicable, in their entirety:

**Equal Opportunity and Affirmative Action.** Blackdragon is an Equal Opportunity and Affirmative Action Employer. Unless exempt, we shall abide by the requirements of 41 CFR §§60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national, origin, protected veteran status or disability.

#### **14. CONFLICTS**

If any of the terms and conditions of this Agreement conflict with a SOW, this Agreement will control and prevail unless and only to the extent the SOW references the specific provisions of this Agreement with do not apply.

#### **15. GOVERNING LAW**

This Agreement will be governed by the laws of the Commonwealth of Virginia, without regard to its conflicts of law provisions.

#### **16. COUNTERPARTS**

This Agreement may be signed in one or more counterparts, and each counterpart will be considered an original agreement. All the counterparts will be considered one document. Each of us may sign and deliver this provision will be interpreted in a way that is valid under applicable law or regulation. If any provision is invalid, the rest of this Agreement or SOW will remain in effect.

#### **17. NOTICES**

All required notices under this Agreement must be in writing and will be considered given when delivered (i) in person; or (ii) by certified or registered mail or overnight courier to the addresses listed below (or such other address as one of us may update and communicate to the other).



Correspondence and notices to Blackdragon shall be sent to:

344 Maple Avenue, #221  
Vienna, VA 22180  
Attention: Contracts Manager  
Email: [contracts@blackdragon.expert](mailto:contracts@blackdragon.expert)

Notices to Customer will be sent to:

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Attn: \_\_\_\_\_

By signing below, the parties agree that this Agreement defines the products and services to be provided to the Customer and fees to be collected by Blackdragon. Each of us has signed this Agreement as of the date first written above.

**Customer:**

Signature: \_\_\_\_\_

Name, Title: \_\_\_\_\_

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

**Blackdragon**

Signature: Robert Rosenberger

Name, Title: \_\_\_\_\_

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

## **Appendix A – MUTUAL NON-DISCLOSURE AGREEMENT**

The Parties hereto shall hold in confidence, and withhold from third parties, all Proprietary Information (as defined below) disclosed by one Party to the other and shall use Proprietary Information only for the purpose(s) stated herein and for no other purpose unless the originating Party shall agree herein or hereinafter in writing. Each Party agrees to safeguard from theft, loss, and negligent disclosure the other Party's Proprietary Information received pursuant to this Agreement by utilizing the same degree of care as the receiving Party utilizes to safeguard its own Proprietary Information of a similar character from theft, loss, and negligent disclosure, but not less than reasonable care, and to limit access to Proprietary Information to those officers, directors, and employees within the receiving Party's organization who reasonably require such access to accomplish the aforesaid purposes.

Each Party agrees the Proprietary Information disclosed by one Party to the other may be disclosed orally, in writing, or in one or more electronic formats on media such as, but not limited to, tapes, diskettes, compact disks, or other similar media. When disclosed orally, at the time of disclosure the disclosing Party shall identify such information as Proprietary Information subject to the provisions of this Agreement, subsequently summarize it in writing within ten (10) days after disclosure, and provide a copy to the receiving Party appropriately marked "Proprietary Information". When disclosed in writing or electronic format, Proprietary Information shall be marked as such in a clearly identifiable way.

Neither Party shall be liable for use nor disclosure of any such Proprietary Information if it can establish by contemporaneous, clear, and convincing written evidence that information of substantially the same form and content:

- is or becomes a part of the public knowledge or literature without breach of this Agreement by the receiving Party; or
- is known to the receiving Party without restriction as to further disclosure when received; or is independently developed by the receiving Party without the use, directly, or indirectly, of information received under this obligation of secrecy with the originating Party; or
- becomes known to the receiving Party to a third party who had a lawful right to disclose it without breaching this Agreement, or
- is disclosed by the originating Party to a third party, including the United States Government without restriction as to further disclosure.

If any portion of the disclosing Party's Proprietary Information falls within any one of the exceptions under (b) above, the remainder shall continue to be subject to the prohibitions and restriction contained herein.

In compliance with U.S. Department of State International Traffic in Arms Regulations and U.S. Department of Commerce Export Administration Regulations, notwithstanding any other provision hereof, the disclosing Party, with respect to information hereunder, shall not,

and shall not attempt to re-export to any country prohibited from obtaining such data, either directly or indirectly through affiliates, licensees or subsidiaries, any technical data acquired from the disclosing Party, any products utilizing such data, or any hereto, to any countries outside the United States which export may be in violation of the United States Export Laws or Regulations. Nothing in this clause relieves the receiving Party from any obligation stated elsewhere in this Agreement not to disclose such data.

Neither the execution of this Agreement nor the furnishing of any Proprietary Information by the disclosing Party shall be construed as granting expressly, by implication, estoppel or otherwise, all licenses, trademarks, copyrights, inventions, or patents now or hereafter owned or controlled by the disclosing Party or any other rights, nor shall the transmission of such Proprietary Information by the disclosing Party constitute a representation, warranty, assurance, guaranty or inducement by the disclosing Party to the receiving Party with respect to infringement of the rights of any third party.

Each Party warrants that it has the right to make the disclosures under this Agreement. EXCEPT AS SET FORTH IN THIS SECTION, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPRIETARY INFORMATION DELIVERED HEREUNDER, INCLUDING IMPLIED WARRANTIES OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR FREEDOM FROM PATENT OR COPYRIGHT INFRINGEMENT, WHETHER ARISING BY LAW, CUSTOM, OR CONDUCT. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES RESULTING FROM THIS APPENDIX A.