

# Travis Software Corp.

## Specialized Services Agreement

This Specialized Services Agreement ("Agreement"), effective November, 20, 2015 ( "Effective Date") by and between Travis Software Inc. ("Travis"), a Delaware corporation having a principle place of business at 24 Greenway Plaza Suite 800, Houston TX 77046 AND City of Rochester, ("Client") with a contact address at 201 4<sup>th</sup> St SE, Rochester, MN 55904\_. Collectively Travis and Client shall be known as the "Parties."

The Parties agree as follows:

### 1. **DEFINITIONS**

- (a) **Confidential Information** shall mean: (i) any and all information that is disclosed by either party to the other, either verbally, electronically, visually, or in a written or other tangible form that is either identified or should be reasonably understood to be confidential or proprietary; and (ii) the terms, including without limitation, the pricing, of this Agreement and any proposals or other documents limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, client lists, employee information, financial information, confidential information concerning either party's business or organization, as currently conducts or may conduct it in the future; (iii) include information concerning any of either party's past, current, or possible future products or methods, including information about research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing, and/or software (including third party software).
- (b) **Business Requirements & Functional Requirements** shall mean the documents detailing the Specialized Services to be completed at Client's request. Each such descriptive document shall be incorporated by reference herein and considered as part of this Agreement.
- (c) **Specialized Services** shall mean the custom services that Client requests Travis to complete pursuant to the Business Requirements.
- (d) **Work Product** shall mean any expression or result of Travis's Specialized Services, or the work, findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, tools, applications, interfaces, enhancements, software, and other technical information created by Travis in the course of performing the Services.

2. **SPECIALIZED SERVICES PROVIDED BY TRAVIS.** Travis shall provide Client certain Specialized Services, as specified in a properly executed Business Requirements.

3. **CLIENT DUTIES.** Client shall work with Travis as Travis develops the Business Requirements draft and discuss any necessary modifications prior to Travis' creation of the final Business Requirements and corresponding Functional Requirements necessary for system implementation. Client must work with Travis throughout the Specialized Service process to ensure accurate system modifications. Client shall provide Travis with reasonable and necessary access to Client's employees that are involved with this Specialized Service during Client's normal business hours and otherwise as reasonably requested by Travis to facilitate Travis's performance of the Specialized Service.

4. **FEES, EXPENSES, & PAYMENT.** Client shall: (i) pay Travis for all Specialized Services performed pursuant to the Business Requirements in accordance with the terms of this Agreement that incorporates the current Travis standard rates, as provided below; AND (ii) reimburse Travis for all reasonable and necessary travel and living expenses Travis incurs performing such Specialized Services, if any; provided, however, that such expenses are discussed with Client prior to incurring such fees and that such fees are in compliance with Travis's travel and expense policy. Client must pay Travis upon receipt of each invoice. All payments pursuant to this Agreement are non-refundable.

Client is responsible for all taxes, duties, and customs fees which may be assessed on the amounts paid for Services performed hereunder, excluding taxes based on Travis's income or payroll (unless Client provides Travis with a valid tax exemption certificate upon execution of this Agreement).

5. **INSURANCE.** Travis shall maintain statutory required Worker's Compensation and Employer's Liability Insurance as required by the laws of any state or country in which Specialized Services are performed.

6. **CONFIDENTIAL INFORMATION.**

- (a) **GENERAL TREATMENT OF CONFIDENTIAL INFORMATION.** Confidential Information shall be treated as strictly confidential and shall not be disclosed to any third party except to those third parties operating under non-disclosure provisions no less restrictive than in this Section and who have justified business "need to know". Client shall protect the deliverables resulting from Specialized Services with the same degree of care. This Agreement imposes no obligation upon the Parties with respect to Confidential Information which either party can establish by legally sufficient evidence that such information: (i) was in the possession of, or was rightfully known by the receiving party without an obligation to maintain its confidentiality prior to its receipt; (ii) is or becomes generally known to the public without violation of this Agreement; (iii) is obtained in good faith from a third party having the right to disclose it without an obligation of confidentiality; (iv) is independently developed without the participation of individuals who have had access to the Confidential Information; (v) is required to be disclosed by court order or applicable law, provided notice is promptly given to the other party and provided further that diligent efforts are undertaken to limit disclosure.
- (b) **CONFIDENTIALITY AND DISCLOSURE OF PATIENT INFORMATION.** The Services may require Travis to have access to information that may be defined as Protected Health Information (PHI) or Individually Identifiable Health Information ("IIHI"), as those terms are used in the Health Insurance Portability and Accountability Act ("HIPAA"), in connection with its services rendered under the Agreement. Travis shall act in accordance with the WebCOBRA End User License Agreement (for WebCOBRA On Demand customers) and/or Business Associate Agreement (for TravisCOBRA, TravisFlex, and T-Bill customers) in place with Client as such agreement relates to Travis' obligations under HIPAA regarding such PHI or IIHI. In addition, Travis's shall, when applicable: (i) treat all donor information in compliance with all applicable federal and state laws; and (ii) implement and use any and all reasonable means and appropriate safeguards to prevent the use or disclosure of IIHI and immediately notify Client of any unauthorized use or disclosure of PHI as required under of HITECH.
- (c) **RIGHTS AND DUTIES.** Either party shall not obtain, by virtue of this Agreement, any rights, title, or interest in any Confidential Information owned by the other party. Within fifteen (15) days after termination of this Agreement, each party shall certify in writing to

the other that all copies of Confidential Information in any form, including partial copies, have been destroyed, returned, or, in the alternative, used solely as directed.

- (d) **SURVIVABILITY.** Information identified within this Section 6 shall survive termination of this Agreement. If the Parties have executed a separate agreement that contains confidentiality terms prior to or contemporaneously with this Agreement, those separate confidentiality terms shall remain in full force to the extent they do not conflict.

7. **INDEMNITY.**

- (a) **GENERAL.** Each party ("indemnifying Party") shall indemnify and hold the other party ("Indemnified Party") harmless against any third party claim, including costs and reasonable attorney's fees, in which the Indemnified Party is named as a result of the negligent or intentional acts or failure to act by the Indemnifying Party, its employees or agents, while performing its obligations hereunder. This indemnification obligation is contingent upon the Indemnified Party providing the Indemnifying Party with prompt written notice of such claim, information, all reasonable assistance in the defense of such action, and sole authority to defend or settle such claim.
- (b) **PATENT AND COPYRIGHT INDEMNITY.** Notwithstanding Section 6(a), Travis shall indemnify, defend and hold Client harmless against any claims that the Work Product delivered to Client pursuant to the Business Requirements infringes upon or misappropriates any United States patent or copyright, provided that Travis is given prompt notice of such claim and is given information, reasonable assistance, and the sole authority to defend or settle said claim. Notwithstanding the previous sentence, Travis will not settle a claim without an unconditional release for the Client, its department, officers, agents and employees from any and all liability. In the defense or settlement of any claim, provided the associated software license agreement between the Parties has not been terminated, Travis shall, in its reasonable judgment and at its option and expense: (i) obtain for Client the right to continue using the Work Product; (ii) replace or modify the Work Product so that it becomes non-infringing while giving equivalent performance; or (iii) if Travis cannot obtain the remedies in (i) or (ii), as its sole obligation, terminate the license for the infringing Work Product to return only the Specialized Services fees paid by Client for such Work Product.

Travis shall have no liability to indemnify and defend Client to the extent (i) the alleged infringement is based on infringing information, data, software, applications, services, or programs created or furnished by or on behalf of Client (ii) the alleged infringement is the result of a modification made by anyone other than Travis; or (iii) Client uses the Work Product other than in accordance with this Agreement or the underlying software license to use such Work Product.

- (c) **SURVIVAL.** The terms of this Section 6 shall survive termination of this Agreement.

8. **WARRANTIES AND REPRESENTATIONS.** Each party warrants that it has the right and power to enter into this Agreement and that an authorized representative, as of Effective Date, has executed this Agreement. Travis warrants that the Specialized Services will be performed in a professional and workmanlike manner in accordance with recognized industry standards. To the extent Specialized Services provided by Travis are advisory; no specific result is assured or guaranteed. TRAVIS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY (BY ANY TERRITORY OR JURISDICTION) TO THE EXTENT PERMITTED BY LAW, AND FURTHER TRAVIS EXPRESSLY EXCLUDES ANY WARRANTY OF

NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY TO THE EXTENT PERMITTED BY LAW.

9. **LIMITATION OF LIABILITY.** EXCEPT FOR THE INDEMNIFICATION PROVIDED IN SECTION 7, TRAVIS' MAXIMUM LIABILITY FOR ANY ACTION ARISING UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION AND WHETHER IN TORT OR CONTRACT, SHALL BE LIMITED TO THE AMOUNT OF SPECIALIZED SERVICES FEES PAID BY CLIENT FOR THE SPECIALIZED SERVICES FROM WHICH THE CLAIM AROSE. IN NO EVENT SHALL TRAVIS BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND. INCLUDING WITHOUT LIMITATION, LOST DATA OR LOST PROFITS, HOWEVER ARISING, EVEN IF CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES AGREE TO THE ALLOCATION OF RISK SET FORTH HEREIN.
10. **ASSIGNMENT OF RIGHTS.** Any expression or result of the Specialized Services completed pursuant to this Agreement are the property of Travis and are licensed to Client, without further license fees, pursuant to the Travis software license(s) to which the Specialized Services pertain; provided, however, that Client shall retain title to such Work Product provided to Client by Travis that contains Client's Confidential Information. Client shall have no right to sublicense, transfer, assign, convey or permit any third party to use or copy any Work Product.
11. **NO THIRD PARTY BENEFICIARIES.** This Agreement shall only be binding upon and inure to the benefit of the Parties hereto; no individual or entity other than the Parties to this Agreement may enforce its terms; and, the Agreement shall not create any right or inure to the benefit of any third party beneficiary.
12. **OWNERSHIP.** The Client acknowledges that any design, technical confidential information and data provided by Travis to the Client as well as all source code developed by Travis for Client shall remain the intellectual property of Travis and shall not be used by the Client, its agents, servants or employees for any purpose other than the originally intended purpose. Client hereby waives any right, title and interest in the development work, including all trade secrets, patent rights and copyrights therein. The Client shall not receive any consideration or royalties in respect of such development related to this Specialized Service.
13. **MAINTENANCE OF DEVELOPMENT WORK.** Standard maintenance and support services offered by Travis do not cover any Specialized Services. If available, maintenance and support of such Work Product created under this Agreement may be addressed as a separate line-item on the already existing arrangement in place, such as the Maintenance & Support Plan Invoice or WebCOBRA Invoice.
14. **INDEPENDENT CONTRACTOR STATUS.** For purposes of this Agreement, Travis shall be an independent contractor, not an employee of Client. Nothing in this Agreement is intended to construe the existence of a partnership, joint venture, or agency relationship between Client and Travis.
15. **NOTICE.** All notices or other communications referenced under this Agreement shall be made in writing to each Party's current address, as designated in this Agreement, or as modified from time to time in writing by the Parties. All notices shall be deemed given upon receipt to the other party if delivered receipt confirmed using one of the following methods: registered or certified first class mail, postage prepaid; recognized courier delivery; or electronic mail.
16. **TERMINATION OF SPECIALIZED SERVICES.** Notwithstanding a separate written agreement between the Parties to the contrary, either party may terminate this Agreement for completion of the Specialized Service at any time by giving the other party written notice of termination. Upon

termination, any fees paid to Travis by Client for Specialized Services not yet performed by Travis will be refunded within ten (10) business days of Travis' receipt of notice of termination.

17. **WAIVER.** No modification to this Agreement nor any failure or delay in enforcing any term, exercising any option, or requiring performance shall be binding or construed as a waiver unless agreed to in writing by the Parties.
18. **FORCE MAJEURE.** Notwithstanding Client's obligation to pay Travis, neither party shall be liable for any failure to perform its obligations under this Agreement if prevented from doing so by a cause or causes beyond its control, including without limitations, acts of God or public enemy, failure of suppliers to perform, fire, floods, storms, earthquakes, riots, strikes, war, and restraints of government.
19. **SEPARATE AGREEMENTS.** All Specialized Services provided herein are acquired separately from any software licenses agreed to between the Parties. Specifically, Client may acquire software licenses without acquiring Specialized Services. Client understands and agrees that this Agreement is a separate and independent contractual obligation from any schedule relating to software licenses. Such software licenses shall continue to be covered by the applicable License Agreement currently in effect. Client shall not withhold payments that are due and payable under this Agreement because of the status of any software licenses or schedules, nor shall Client withhold payments that are due and payable relating to software licenses or schedules because of the status of work performed hereunder. In addition, the ability to provide such Specialized Services is not exclusive or specific to Travis and are commercially available from a variety of third party service providers.
20. **DISPUTE RESOLUTION.** Any disputes or claims under this Agreement or its breach shall first be submitted to and resolved exclusively by arbitration conducted in accordance with American Arbitration Association rules. One arbitrator appointed under such rules shall conduct arbitration. Arbitration shall be in Houston, TX, and the laws of Texas shall be applied. Any decision entered thereon in any court of competent jurisdiction shall be binding. Notwithstanding the above, Travis may sue in any court for infringement of its proprietary or intellectual property rights.
21. **DATA PRACTICES NOTICE.** Travis acknowledges that the work identified on the corresponding Order Form to be completed by Travis pursuant to this Agreement is subject to Minnesota law relating to the creation, collection, receipt, storing, use, maintenance, or dissemination of data, as required by Minnesota Statutes, Section 13.05, subd. 11(a),
22. **LAW.** This Agreement constitutes the entire understanding between the Parties with respect to the subject matter herein and may only be amended or modified by a writing signed by a duly authorized representative of each party. If any provision of this Agreement is held to be unenforceable, the other provisions shall nevertheless remain in full force and effect. Except as otherwise specifically stated herein, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy. This Agreement replaces and supersedes any prior verbal or written understandings, communications, and representations between the Parties regarding this Specialized Service referenced on the corresponding Order Form No other ordering document that purports to modify or supplement the printed text of this Agreement shall add to or vary the terms of this Agreement. All such proposed variations, edits, or additions (whether submitted by Travis or Client) to this Agreement, are objected to and deemed material unless otherwise mutually agreed to in writing.

Client represents and warrants that: (i) it has the right and authority necessary to enter into this Agreement; (ii) it owns all rights in and to data provided to Travis for use in connection with the Specialized Services; and (iii) Travis's use of such materials in and in connection with the Specialized Services will not violate the rights of any third party.

The Parties hereby agree to all of the above terms and have executed this Agreement by a duly authorized officer or officer representative.

For Client

ACCEPTED BY: Travis Software Inc.



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Authorized Signature

Authorized Signature

Ardell F. Brede

\_\_\_\_\_

Printed Name

Printed Name

Mayor

\_\_\_\_\_

Title

Title

12/10/2015

\_\_\_\_\_

Date

Date

Attested by:  
12/10/2015



City Clerk