

# Master Service Agreement

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CW Consulting, LLC  
Calvin Weeks

*located at*

1110 W Main St. #60  
Norman, OK 73069  
(405) 310-9292 (Direct)

#### **Statement of Confidentiality**

Parties agree that this document and its referenced documents contain trade secrets and information that are sensitive, proprietary, and confidential, the disclosure of which would provide a competitive advantage to others. This document and its referenced documents shall not be disclosed, used, or duplicated, in whole or in part.

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# CW CONSULTING, LLC

## MASTER SERVICE AGREEMENT

This Master Service Agreement (the “MSA”) sets out the terms by which CW Consulting, LLC, an Oklahoma limited liability corporation (“CW”) provides services to clients, including those specifically identified in any CW approved Client Requests for Services, such as sworn testimony, digital forensics, cyber security consulting, technology consulting, incident response, project management, risk advisory, internal forensic identification, collection, preservation, processing, reviewing, analysis, production, and expert witness presentation for civil and criminal litigation, internal corporate investigations, for private, corporate, nonprofit, and government concerns performed by CW for Client as set forth in this MSA (collectively, the “Services”). The parties to this MSA agree that the term “Client” includes its affiliates, subsidiaries, parent company, and all corporate entities with common ownership, including their permitted assigns and successors (collectively, whether one or more, the “Client”). Client and CW agree that this MSA: (i) will apply to all services rendered by CW to Client, (ii) supersedes all earlier terms, conditions, and agreements (if any) and (iii) applies to every agreement for services made between CW and Client, unless otherwise agreed to and subscribed by the parties to this MSA.

### 1. Engagement and Scope of Work.

The scope of work for the Services is described in this MSA, and CW will supply the Services to Client in accordance with this MSA. A legally binding contract will be created once the Client: (1) receives a copy of the current MSA published at <https://www.calvinweeks.com> all or in part, (2) signs and returns one or more of CW’s Client Request for Services forms and CW has accepted one or more of those Client Request for Services forms, or (3) if CW commences performance of the Services in reliance upon a written or oral request for Services. (All completed CW Client Request for Services forms, written or oral requests for Services accepted by CW shall be considered as part of and incorporated into this MSA). CW may terminate the MSA upon written notice at any time, provided, however, that any such termination shall not affect in any way Client’s obligation to pay for the Services rendered up to the date of termination of the MSA. CW reserves the right to outsource and assign duties and obligations under the MSA to its staff and independent contractors as it deems appropriate to effect the purposes of the MSA.

### 2. Description and Nature of Services.

If provided in the MSA, CW will advise and/or provide Client as applicable: (i) issues related to information technology, cyber security, digital forensics, electronic discovery, electronic recovery, risk advisory, and incidence response, (ii) assistance in identifying possible sources of relevant electronic data, (iii) provide technical advice in all aspects of discovery or litigation support requests, (iv) oversight of, and/or implementation and/or retrieval of Client’s network infrastructure, server(s), personal computer(s), cloud systems, virtual systems, applications, electronic file(s), metadata, backup tapes, hard drives, floppy diskettes, compact discs, DVD discs, memory cards, zip disks, dongles, cell phones, camera discs, thumb drives and other media, including e-mail and all file types including deleted, encrypted and protected materials and other computerized media and other data, and (v) on-site field examination to create copies of system files, and to conduct further reviews and examinations as needed (collectively, whether one or more, the “Subject”).

In some instances it may be necessary for CW to convert data in order to create machine readable or hard copy printout of files. CW will use the most cost-effective process available for reliable data

conversion including the use of in-house equipment and the use of qualified data conversion/processing experts working under direct supervision of CW personnel.

Client may submit to CW written requests to change the scope of Services to be provided under the MSA. If so, CW may, at its discretion, consider such change requests, but CW has no obligation to do so. If CW elects to consider such a change request, then CW will promptly notify Client if it believes that the change request requires an adjustment to the fees charged under the MSA or to the nature of Services to be performed under the MSA. In such event, the parties will negotiate in good faith a reasonable and equitable adjustment to the fees and/or Services to be performed, as applicable. CW will continue to perform Services pursuant to the MSA and will have no obligation to perform any change request unless and until the parties have agreed in writing to such an equitable adjustment.

### **3. CW's Good Faith; Indemnity; Non-Interference.**

Time for the provision of the Services by CW shall not be of the essence. While CW will use reasonable efforts to achieve the agreed dates for the provision of the Services, CW will not be liable for failure to achieve those dates. Due to the nature of the Services, CW cannot warrant or guarantee that it will be able to perform and/or complete the Services as described in the MSA. In particular, with regard to the examination or forensic processing of data, CW: (i) may not be able to recover the data in whole or in part; (ii) may not be able to gain access to some or all of the hardware, software, or other materials and equipment detailed in the MSA (the "Equipment"); (iii) may deem it is necessary to examine additional equipment not included in the MSA; (iv) may determine the data recovered may not be of evidentially significant material; (v) may cause damage to the Equipment as a result of the data recovery process; (vi) Services may lead to a loss of business operating time or other interruption to service for Client or any relevant third party. Client acknowledges that such problems cannot be identified by CW until after it has commenced the Services, and then, it may not be possible to fully ascertain the full extent of those unknown variables.

Client further acknowledges that the Services are in a rapidly changing area of technology and law. As a consequence, Client shall indemnify and hold CW, its principals, officers, employees, affiliates, and independent contractors harmless and immune from any damage, action, or liability occasioned by the rendering of the Services, or disclosure of reports to any other party, and/or from its Services or the consequences arising from the Services. Client acknowledges all responsibility, accountability, and liability for all aspects and consequences of this examination arising from, in any manner whatsoever from CW good faith efforts, activities, examinations, and Services in, or rendered on behalf of Client.

Client's obligations shall include, but not be limited to: (i) ensuring that CW's representatives shall have unrestricted and safe access to the relevant premises and working space, regardless of whether the Services are to be provided (in full or in part) at the premises of Client, or a third party; (ii) making available to CW all data, information, and any other materials required by CW to perform the Services set forth in the MSA; (iii) providing CW with sufficient working space and office support (including telephones, photocopying equipment, and the like) as CW may reasonably request; (iv) ensuring that all relevant security, health and safety rules and procedures are brought to the attention of CW's representatives attending the premises where the Services are to be performed; (v) providing qualified personnel who are capable of performing Client's duties and tasks in relation to the Services, and who shall perform such other duties and tasks as may be reasonably be required to permit CW to perform the Services; (vi) defending all claims and subpoenas with counsel satisfactory to CW even if such claims are groundless; (vii) conducting negotiations of resolution of such claims and subpoenas and assuming

financial responsibility for all settlements and resolutions of subpoenas; and (viii) paying, and discharging, when and as the same may become due, any and all judgments rendered against CW arising from the rendering of its Services. Client shall allow CW to conduct the examination and provide the Services in its sole discretion through any lawful means it deems appropriate. Any interference by the Client in this examination or any misrepresentation of information made to CW or non-payment to CW for its Services, releases CW, at its option and at its sole discretion, from any further obligations under the MSA.

#### **4. Computer, Data, Software, and Internet Use Security.**

CW seeks to protect its proprietary property including data, hardware, software, and other systems, by utilizing reasonable care in the employment of various computer programs, applications, and other passive and active protective measures against viruses, worms, hacking, interruption, interference, and similar and other destructive files or harmful activities. CW expects Client to reasonably employ similar methods of sufficient quality and quantity with Client's computer systems, data, hardware, software, and internet use, to support and compliment CW security measures.

CW accepts no responsibility or liability, express or implied, for any damages resulting from Client's (including Client's agent's) acts or omissions regarding any computer system, network or other Equipment related to Services provided by CW, or any hardware, software, or data device, computer, or other Equipment involved in CW's Services. Such actions and/or omissions of Client could include, but are not limited to, failure to consistently and conscientiously employ reasonably sufficient data and systems protection measures, use of insufficient, obsolete, or poor quality data protection programs, failure or compromise of any Client computer system or application, unauthorized or illegal access of prohibited internet sites or files, and negligent handling or preservation of critical data. Client assumes and agrees to indemnify and defend CW from any general, consequential, indirect, incidental, exemplary, punitive, special, or other damages resulting from such actions and/or omissions of Client, or from Client's use of the internet and CW's database and software, including, without limitation, business interruption or loss of business information or data of CW, CW's customers, vendors, agents, or cooperative entities, damage to CW's goodwill, computer systems, networks, data files, or other property, even if CW has been advised of the possibility of such damages.

Client assumes all risk incident to, or resulting from, other CW clients or authorized and unauthorized third parties who may access or attempt to access the data or Services provided by CW through the internet or connected networks. Client acknowledges these risks as inherent to the shared nature of the Services provided by CW, and Client agrees to take full responsibility for taking all reasonably necessary and adequate security precautions and safeguarding the data and restricted access to the data. Client agrees to notify CW immediately, by the most expeditious method possible, if Client suspects or has reason to believe that CW's Services, data, and/or processes or software are being stolen, accessed by an unauthorized user, damaged, destroyed or otherwise used for a fraudulent or illegal use. Client agrees to provide all necessary details and documentation to CW and/or law enforcement officials concerning any suspected unauthorized or illegal activity, and to support and fully participate in the examination and/or prosecution of any such unauthorized or illegal activity to the extent requested or required.

#### **5. System Rights and Privacy Issues.**

Client warrants and affirms that it has the lawful right and authority to authorize CW's Services, including, but not limited to cyber security consulting, incident response, electronic discovery, and digital forensic examination of the Subject (defined as all types of media containing electronic evidence as outlined in the MSA), and the Subject is under Client's ownership, dominion, and control; and that there are no privacy protection issues under the Electronic Communications Privacy Act, and related laws and regulations not otherwise disclosed under the MSA or that privacy exceptions are compromised or violated by Client's engagement of CW in implementing the Services on one or more of the Subject contemplated by the MSA. Client further represents and warrants that Client has complied with any and all applicable Fair Credit Reporting Act rules, regulations, and issues related to the Services under this MSA. Client acknowledges that the MSA is for the rendering of the Services, and the Subject is not a person for purposes of state or federal law relating to whether or not CW is engaging in investigation as opposed to examination when performing or rendering the Services.

## **6. Fees Incurred and Expenses Advanced.**

Client agrees to pay CW a rate of \$250/hour for information technology services, \$400/hour for the examination and consultation services, and \$600/hour for the expert services such as depositions, preparing for depositions, preparing expert reports or affidavits, or other sworn testimony and as may be amended periodically. CW's hourly fees are based on one-quarter of an hour increments of time spent providing the Services and computed in one-quarter of an hour increments. While CW may provide informal estimates of the amount necessary to perform the Services enumerated in the MSA, Client understands that the actual amounts may vary due to unforeseen circumstances. Client understands that any estimate is not binding or all-inclusive dollar figure for the rendering of the Services.

All items on the case Chain-of-Custody will be maintained at a rate according to the fee schedule per month. Charges will increase or decrease as items are added or removed from Chain-of-Custody to be maintained. Charges will cease once the case is closed and/or all Chain-of-Custody items are out of our possession.

Client also agrees to pay all incidental expenses reasonably incurred by CW in connection with the rendering of the Services, including without limitation: any legal fees and costs incurred by CW in the rendering of the Services, shipping fees, messenger fees, travel expenses, long distance and mobile telephone calls, photocopying, facsimile transmissions, data processing, and disk tape duplication or conversion. There is a four (4) hour minimum billing for work requiring CW's representatives' work away from its corporate offices. Travel is billed at half CW's ordinary hourly rate for Service provided. When using a CW personnel vehicle, driving mileage is billed at the current IRS published rate per mile, located at <https://www.irs.gov/tax-professionals/standard-mileage-rates>, and other travel expenses including, but not limited to, airfare, other transportation expenses, food and lodging are billed at the actual amount incurred for reasonable expenses appropriate to the locale in which the Services are provided. Processing time will be charged at a rate of \$25 per hour for data to be processed using software and/or hardware.

Depositions or other sworn testimony, including time spent preparing for depositions, will be billed at a four (4) hour minimum and shall be paid in advance, if there are not sufficient funds in Client's replenishing retainer. Third party computer time (e.g., the time that an analysis machine is in dedicated use conducting searches, making images, processing, review etc.) is charged at the rate incurred by CW. The cost advanced of unique hardware or unique software (*i.e.* hardware or software that CW does not presently own or have licensure rights to, and is unique and necessary to the Services provided to the Client) will be charged to Client; CW will notify and obtain Client's approval before any special purchases of hardware or software are made in excess of \$1,000.00.

All fees, expenses and other amounts payable to CW hereunder do not include any sales, use, value added or other applicable taxes, tariffs or duties, payment of which will be the sole responsibility of Client. Client will promptly reimburse CW for any such amounts that CW pays on Client's behalf.

## **7. Billing; Initial Retainer; Replenishing Retainer.**

CW generally invoices its clients on a weekly or other periodic basis. CW's invoices generally inform the Client of the nature of Services performed. Invoices for work performed and expenses incurred are due and payable on receipt and time for payment shall be of the essence. Invoices and statements are due upon receipt by Client. All unpaid balances will bear a late fee on a monthly basis at the rate of 2.5% per invoice commencing thirty days following the date of the invoice. Statements will generally be sent upon request for service rendered up to that point. If an invoice or statement is not paid when due, CW reserves the right to cease providing Services and to withdraw from any pending court or administrative matters.

The advance retainer for Services is generally reflected on the Client Request for Services, or other CW approved Client Service Request form, and because of the nature of the Services requested, fees incurred and expenses advanced will likely exceed the original retainer or replenishing retainer. Consequently, Client shall maintain a minimum replenishing retainer as provided in any CW approved engagement or Client Service Request forms. A replenishing retainer means that to the extent the retainer already paid by Client falls below the amount shown on the MSA Client Request for Services, besides paying any outstanding balance, Client shall pay such funds as may be necessary to maintain the minimum retainer. At the conclusion of the Services, if any part of Client retainer is unused, the balance will be returned to Client within thirty (30) days upon written request of the Client.

Should Client become insolvent, be unable to pay its debts as they fall due, commit any act of bankruptcy, or go into liquidation, have a receiver appointed, or make any voluntary arrangement with its creditors or suffer any similar action to be taken: (i) if the Services have been completed but not paid, all sums due and owing under the MSA shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary; (ii) if the Services have not been completed CW shall have the right to suspend or terminate further performance of Services under this MSA and recover from Client an appropriate proportion of monies due under the MSA to reflect the Services provided and all costs incurred by CW, but which remain unpaid by Client.

## **8. Cancellation / Postponement.**

Because of the nature of Services require CW to allocate resources away from other CW clients and projects and frequently require CW to identify, recruit, train, and prepare its associates and staff to properly provide the Services to Client, the costs of which are not easily ascertainable, the Client shall not cancel or postpone all or part of the Services under the MSA, except with the written consent of CW and with the express understanding that Client shall: (i) immediately pay for all unpaid Services to date of such termination; (ii) pay such cancellation or postponement fee as CW may at its sole discretion consider reasonable which shall not exceed thirty percent (30%) of the total amount of what has been either billed by CW to the date of Client's notice to CW of termination or the remaining amount contemplated to be billed by CW under this MSA, whichever is greater; and (iii) indemnify CW in full against all loss (including loss of profit) costs (including cost of all time and materials purchased, used, or advanced by CW), damages, charges, and expenses incurred by CW as a result of such cancellation or postponement.

## **9. Uncontrollable Circumstances.**

Neither party will be responsible for any failure or delay in performance under the MSA (except for the prompt and timely payment of CW's Services by Client) due to causes beyond the respective party's reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, acts of terror, riot, acts of God or governmental action. Regardless of the foregoing, Client shall be required to immediately pay all outstanding amounts for Services previously performed by CW under this MSA.

## **10. Intellectual Property Rights.**

Nothing in the MSA shall be construed as assigning to Client or granting Client any interest in any intellectual property rights in the Services, and Client shall not at any time in any way question or dispute the ownership by CW or any other party of the intellectual property rights. Subject to the terms of the following section, the intellectual property rights in any material produced in the conduct of the Services are the exclusive property of CW and Client shall not acquire any right, title, or interest in such intellectual property rights. Any intellectual property rights which are created or contributed to by CW in the course of providing the Services belong to CW and Client acknowledges that it shall have no right or interest in such intellectual property rights, and Client shall not be entitled to use it in any other form or in any other media without CW's prior written consent. Without prejudice to the general rights of CW under this section, any software used, created, or written by CW in the providing of the Services shall be and shall remain the absolute property of CW.

CW shall retain copyright in all documentation, reports, and other material which CW creates. Client will not acquire any intellectual property rights in that publication or material, and Client will not be entitled to use it in any other form or in any other media without CW's prior written consent. It is acknowledged by Client that there is no warranty, either express or implied, on the part of CW that Client can make use of the Services free from any infringement of the intellectual property rights of third parties.

## **11. Work Product; Illegal materials; Confidentiality.**

All work product developed by CW specifically for Client in connection with the Services shall be deemed to be the property of Client. Client acknowledges and agrees that to the extent CW uses generalized or pre-existing work product (e.g., surveys or computer programs) in the course of performing the Services, CW shall retain all ownership and title in and to all such work products. Any content, data or images deemed by CW, in its sole discretion, to be illegal or be contraband may result in the information being turned over to authorities. CW may request Client be present during the process of reporting to the appropriate authorities. CW may, but shall not be obligated to provide guidance for handling any incident involving possible illegal activity or possession of contraband material. Client understands and agrees to waive any and all expectation of privacy or confidentiality in these matters; however, CW understands and agrees that no information will be released to unauthorized parties, and all such information shall be kept confidential. Unless otherwise required by law, Client and CW each expressly undertake to retain in confidence and to require their respective employees and contractors to retain in confidence all information, materials and know-how exchanged in connection with the MSA and identified as being proprietary, privileged, and/or confidential or which, by the nature of the particular disclosure, ought in good faith to be treated as proprietary, privileged, and/or confidential (the "Confidential Information"). CW and Client each further agree that they will make no use of such Confidential Information except as consistent with the terms and purpose of the MSA or with the specific prior written consent of Client. Notwithstanding the foregoing, Client and CW may disclose Confidential Information on a need-to-know basis to its respective legal counsel, accountants, financial advisors, and contractors.

## 12. Third Parties.

Client shall be solely responsible for payment of all fees and expenses as described in the MSA. In the event that Client has arranged for a third party to pay CW, CW will accept payment from such third party in place of a direct payment, but Client agrees that CW shall under no circumstances be obligated to recover any outstanding fees or expenses from third parties on Client's behalf, nor owe any professional or other duties to that third party, and Client remains primarily liable for the rendering of the Services and any expenses, incidental or otherwise, incurred by CW. Client may not assign any duties or obligations under the MSA without the express prior written consent of CW.

## 13. Instructions from Attorneys.

In the case of any Services performed in connection with, or anticipation of any legal action, Client agrees that CW shall take instructions with regard to the Services from Client's attorney, and shall work through such attorney in performing all Services. In the event that Client is a law firm or attorney and has engaged CW to perform Services on behalf of a third party client, CW shall take instructions with regard to the Services from that law firm or attorney.

## 14. Warranty and Remedies.

There is no guarantee, expectation, or promise expressed or implied by CW as to the outcome of the Services or any examination contemplated by the Services. The entire manner, methods, means, totality, and sufficiency of conducting any and all examinations and the Services shall be within the sole discretion of CW. Client confirms that CW is not responsible whatsoever for any of the following: any type of loss, damage, corruption or theft of any of Client's property, equipment or data; or any hardware or software or media failure of any type; or for maintaining, keeping, or storing any records, reports, data, or media of any kind, including any of Client's Licensed Products (the term "Licensed Products" refers to any legally licensed software or hardware that CW acquired for or acquired to perform Client's requested Services); or for any claims relating to the Services. CW's sole liability, and Client's sole remedy, in connection with the MSA shall be limited to having CW bear the reasonable cost of redoing (or, at CW's option, having redone) any Services. **NOTWITHSTANDING THE FOREGOING, CW'S TOTAL LIABILITY TO CLIENT UNDER THE AGREEMENT, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THE AMOUNTS PAID TO CW BY CLIENT UNDER THIS AGREEMENT. *SUCH REMEDY SHALL BE AVAILABLE ONLY IN THE EVENT THAT CLIENT REPORTS IN WRITING ANY BREACH OF CW'S WARRANTY WITHIN TEN (10) DAYS OF SUCH BREACH, AND PROVIDES DOCUMENTATION OF SUCH BREACH.* IN NO EVENT SHALL CW BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, BUSINESS DATA AND THE LIKE) ARISING IN CONNECTION WITH CW'S SERVICES OR THE AGREEMENT, EVEN IF CW HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

## 15. Controlling Law; Venue; Arbitration; Integration.

CW and Client agree that all disputes, controversies, or claims relating to the MSA and/or CW's Services rendered to, or expenses incurred for, Client, including but not limited to any billing matters, the validity and enforceability of this MSA, and any issue relating to the arbitrability of this MSA, shall be promptly resolved exclusively by binding arbitration, pursuant to the Commercial Rules of the American



Arbitration Association, by a single, licensed attorney arbitrator, appointed in accordance with those rules at, and in Cleveland County, Oklahoma, and which all costs and fees of same, including attorney fees and costs, shall be borne by the non-prevailing party. The laws of the State of Oklahoma shall govern the validity, construction, enforcement, and interpretation of the MSA without regard to conflicts of laws. The MSA contains the entire agreement between the Client and CW regarding the Services to be performed by CW, and the fees charged, the expenses to be paid, and supersedes all prior oral or written agreements.

#### **16. Notices.**

Any communications provided for by the MSA shall be in writing and shall be effective when sent by: (i) facsimile with confirmation, (ii) e-mail with confirmation, or (iii) upon receipt via U.S. Certified Mail postage prepaid, with return receipt requested.

#### **17. Non-Solicitation.**

During the term of this MSA, and for a period of twelve (12) months thereafter, Client shall not, either its own account or for any other person, firm, partnership, corporation, or other entity (a) hire, solicit, interfere with, or endeavor to cause any employee or contractor of CW to leave employment or breach its contract with CW, or (b) induce or attempt to induce any such employee or contractor to breach such employee or contractor agreement with CW

#### **18. Survival.**

The rights and obligations of the parties contained in Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 will survive the expiration or termination of the MSA.

#### **19. General.**

This MSA shall not be revised or amended except in writing executed by both Client and CW. Subject to the restrictions on assignment contained herein, the MSA shall be binding upon Client's heirs, executors, administrators, other legal representatives, successors, and assigns for which no Client assignment shall be made without the prior written consent of CW. If any provision of the MSA is determined to be unenforceable, the MSA shall be considered divisible as to such provision, and the remainder of the MSA shall be valid and binding as if such provision were not included in the MSA. Failure of either party to insist upon the strict performance of any provision of the MSA, or to exercise any option, right, remedy, or power contained in the MSA will not constitute a waiver or relinquishment of any other right hereunder or of any other subsequent breach or default. The MSA may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. CW and Client agree to accept each other's electronic signatures as if they were originals. CW and Client agree to accept information, communications, and billing through electronic communications, including email, at the email address provided by Client to CW. The MSA is made effective on the date listed on Client Request for Services of the MSA, any CW approved Client service request forms, or the date CW commenced providing Services to the Client, whichever comes first.