

Merrimac Solutions, Inc.

City of Aurora – MASTER SERVICES AGREEMENT

This Master Services Agreement is made as of this date Jan 24, 2014 by and between (“City of Aurora”/“Client Company”) located at (44 East Downer Place, Aurora, IL 60507) as specifically set forth in the signature block to this Agreement and Merrimac Solutions, Inc. located at 2245 Sequoia Drive, Aurora, IL 60506.

Client Company requires managed services (“Professional Services”) from time to time, for implementation of technology within the Client Company.

Client Company hereby enters into a Master Services Agreement (“Agreement”) with Merrimac Solutions, Inc. so that it may contract Merrimac Solutions, Inc. Consultants (“Consultants”) to augment or fulfill Client Company Services obligations.

Professional Services Work Memo. Client Company shall furnish the project details, services required, software, versions and other related information into a document identified as a “Statement of Work,” for each service engagement requiring Merrimac Solutions services. Merrimac Solutions, Inc. shall then provide a statement of Services and compensation, known as a “Work Memo” which contains the details required for work and contacts while on the Service engagement.

Merrimac Solutions, Inc. may, at its discretion, request additional supporting materials, client conference calls or any other method required to obtain the needed details to accomplish the project and fulfill the Service engagement.

ConnectWise System: Time and Expense Reporting. Merrimac Solutions, Inc. uses the ConnectWise system. Merrimac Solutions, Inc. records time and expenses in this system and issues invoices as defined below in the Compensation section. Merrimac Solutions, Inc. also maintains supporting documentation relating to each Services engagement and shall provide a copy of same to client with every invoice submitted.

Time Reporting.

- (a) Merrimac Solutions, Inc. shall record billable time as actual, rounding to the next 15 minutes.
- (b) Merrimac Solutions, Inc. shall record a full day once 8 consecutive hours of work have transpired.

Compensation. Client Company shall compensate Merrimac Solutions, Inc. for Services provided by paying the fees described in the Work Memo within 45 days of invoice.

Invoices and Payment Terms. Merrimac Solutions, Inc. invoices all Client Companies for Services rendered on a weekly basis. Since professional services are the primary business focus of Merrimac Solutions, Inc., Client Company will review each Merrimac Solutions, Inc. Work Memo carefully and agree to the payment terms on the Work Memo prior to returning a signed copy to Merrimac Solutions, Inc. Client Company agrees to remit payment against such invoices within the agreed schedule.

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Additional modification of these payment terms may be considered for projects that have unique requirements and when such modification is agreed upon by Merrimac Solutions, Inc. and Client Company in advance of the specified Work Memo and Services Agreement.

Merrimac Solutions, Inc. shall bill appropriately for time accumulated while performing Services for Client Company using the following rate schedule:

Compensation Schedule (Time Zone set per Consultant’s geographical location)	Rate Adjustment
Weekday – 8:00 AM to 5:00 PM (Considered normal business hours)	1X Hourly Rate
After Hours – 5:00 pm to 8:00 AM	1X Hourly Rate
Weekends	1.5X Hourly Rate
New Year’s Eve, New Year’s Eve Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after, Christmas Eve and Christmas Day	1.5X Hourly Rate

During the normal course of an engagement, pursuant to a Work Memo, travel to a client location may be necessary. In the event that travel is necessary to facilitate a project, or any part thereof, travel will take place during Merrimac Solutions, Inc. normal business hours.

If travel is required outside normal business hours to meet a specific need or requirement for the client or project, then travel is billable at a standard Weekday rate. No additional premiums will be added for travel. In addition, travel outside of Illinois and Wisconsin is considered long distance travel and is billable at the Weekday rate.

Merrimac Solutions, Inc. reserves the right to reduce rates as appropriate. Further Merrimac Solutions, Inc. shall seek approval from Client Company before engaging with an end user (or employee) at Client Company outside of the defined normal business hours identified above to provide service.

Client Company agrees to pay each statement of receipt thereof. In the event that payment is not received by the agreed schedule as described in the Work Memo for an undisputed bill, then Client Company agrees to be liable for and pay a late fee equal to one percent (1 %) per month on the outstanding balance, as set forth in the Illinois Local Government Prompt Pay Act, 50 ILCS 505/1, *et seq.*

In the event that Merrimac Solutions, Inc. shall withdraw, or be discharged by Client Company, Client Company agrees to promptly pay for actual services rendered or unreimbursed costs or expenses incurred and outstanding up to the date of withdrawal or discharge, provided that such amounts are undisputed.

Term and Termination. This Agreement shall be effective until we have received written notification from Client Company.

- (a) **Termination without Cause.** Either party may terminate this Agreement or any Work Memo, for any reason, on at least ten (10) business days prior written notice, which shall

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specify the exact date of termination. Client Company agrees to remit payment for any and all Services actually rendered as well as expense incurred by Merrimac Solutions, Inc. and its representatives up to and including the date of Agreement termination.

- (b) **Termination with Cause.** Either party may terminate this Agreement or any Work Memo, for cause, upon five (5) days prior written notice unless the other party cures the breach during the five-day period.

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Representation and Warranties. Merrimac Solutions, Inc. represents and warrants that:

- (a) It is duly organized, validly existing, and in good standing under the laws of the State of Illinois.
- (b) Its Federal Employer Identification Number is FED ID # 30-0301606
- (c) It has and shall maintain liability insurance as required.
- (d) Its independent contractors are and shall at all times be legally authorized to work in the United States in accordance with all applicable immigration laws.
- (e) It has and shall continue to follow all legal procedures required to obtain valid authorization for any alien provided to Client Company to perform Services at Client Company.
- (f) It currently has multiple clients and/or agencies, has had multiple clients and/or agencies in the past, and/or intends to have multiple clients and/or agencies in the future.
- (g) It makes its service available to the general public and does not make its services exclusively available to Client Company.
- (h) It shall maintain accurate financial records in connection with the performance of this Agreement and the conduct of its business.
- (i) It shall comply with all applicable laws and is not prohibited from performing its obligations under this Agreement by any other agreement.
- (j) It shall abide by the rules and policies as defined by the Client Company regarding the conduct of Merrimac Solutions, Inc. Consultants performing Services work on the Client Companies premises, provided that such rules and policies are provided to Merrimac Solutions, Inc. and Client Company in advance of the initiation of any project services.
- (k) It shall provide Services in a professional and workmanlike manner, and services shall not violate any third-party intellectual property rights as identified to Merrimac Solutions, Inc. in advance of any project initiation.
- (l) It relinquishes any claim to proprietary rights over all hardware and software that is introduced by Merrimac Solutions, Inc. into the Client Companies computer systems.

Indemnification. Merrimac Solutions, Inc. agrees to indemnify, hold harmless, and defend Client Company from and against any and all judgments, liabilities, damages, losses, expenses, and costs (including, but not limited to, court costs, and reasonable attorney's fees) which relate to:

- (a) Merrimac Solutions, Inc. willful misconduct or negligence in connection with this Agreement and any Work Memo.
- (b) Merrimac Solutions, Inc. breach of any representation, warranty, or obligation under this Agreement.
- (c) The violation of any third party's intellectual property right.

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Intellectual Property. Merrimac Solutions, Inc. and Client Company understand that it may be necessary, while in the course of normal business, to develop custom specialty scripts or other custom tools and methods (“Custom Tools”) to complete the delivery of a solution for a Client Company.

- (a) The development of Custom Tools is common practice in the information technology industry. All Custom Tools will remain the Intellectual Property of the Merrimac Solutions employee/Consultant who agreed to release, at no cost to the Client Company and Merrimac Solutions, Inc. full and complete access to source files, scripts, code and all related materials, in all forms along with the necessary information to continue to support such a solution for the benefit of ongoing business. It is also agreed that the Independent Consultant, may, at his/her own discretion, continue to use the custom tools in any capacity they see fit.
- (b) This Agreement constitutes a release of liability and hold harmless against the effects of, or the release or, such Custom Tools. Merrimac Solutions, Inc., its Client Company, and all persons associated with these entities shall never receive damages in any part, or by any means as a result of the Consultant’s use of Custom Tools as noted, but not limited to the above aforementioned section, provided that the release of liability contained herein shall not apply to claims alleging Consultant’s development of Custom Tools infringes or misappropriates any United States patent, copyright, trademark, trade secret or any other such right.

Mutual Non-Disclosure. Both Merrimac Solutions, Inc. and Client Company shall protect and keep confidential all non-public information (“Confidential Information”) disclosed by either party and shall not, except as may be authorized by in writing from an appropriate authority of said organization, use or disclose any such Confidential Information for any purpose other than the performance of this Agreement or as required by law. Upon expiration or termination of this Agreement, Merrimac Solutions, Inc. shall return all written materials that contain any Confidential Information to Client Company and destroy all other materials that contain Confidential Information. Merrimac Solutions, Inc. must provide written confirmation that all Confidential Information has been returned or destroyed.

These obligations of confidentiality shall not apply to any information that Merrimac Solutions, Inc. can demonstrate;

- (a) Was previously known.
- (b) Is or becomes publicly available through no fault of Merrimac Solutions, Inc. or its employees or consultants.
- (c) Is disclosed to Merrimac Solutions, Inc. by a third party having no obligation of confidentiality to Client Company. Both Client Company and Merrimac Solutions, Inc. further agree that neither shall disclose the rates or terms of this Agreement or any Work Memo.

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In addition to the Confidential Information reference above, Merrimac Solutions, Inc. acknowledges that both state and federal privacy statutes exist relating to such issues as medical records (Health Insurance Portability and Accountability Act-HIPPA), banking and financial records (Gramm-Leach-Bliley Banking Modernization Act-GLBA), and e-signatures (Uniform Electronic transactions Act-UETA) (Electronic Signatures in Global and National Commerce Act-ESIGNA). Should Merrimac Solutions, Inc. have access to information implicated by privacy laws such as those identified herein, Merrimac Solutions, Inc. shall conduct itself in accordance with the requirements of these statutes. Further, both Merrimac Solutions, Inc., and Client Company acknowledge that such information shall be treated by the parties as Confidential Information as referenced above. Merrimac Solutions, Inc., agrees to follow the Client Companies policies and procedures including but not limited to IT policies regarding the use of non-client approved software, hardware and storage devices, providing such policies are communicated to Merrimac Solutions, Inc., and its Consultant prior to the initiation of the Services engagement.

Non-Competition. During the term of this Agreement and for one (1) year thereafter, Client Company and Merrimac Solutions, Inc., shall not solicit nor accept any opportunity to provide consulting services to/from each other's organizations except as directed by Client Company pursuant to a Work Memo.

During the term of this Agreement and for a period of one (1) year thereafter, neither party shall solicit nor hire any employee or independent contractor from each other. If either party solicits and hires the other's employee or independent contractor during the term of this Agreement or within a period of one (1) year thereafter a fee equal to 30% of the employee's current annual salary or the Independent Contractor's projected annual billable revenue will be paid by the hiring party within thirty (30) days of the date of hire.

Independent Contractor Status. The parties hereto are independent contractors. Nothing herein shall be deemed to create any form of partnership, principal-agent relationship, employer-employee relationship, or joint venture between the parties hereto.

Merrimac Solutions, Inc. shall provide Services to the Client Company using its own independent skill and judgment while working within the Client Companies environment and related requirements.

Acknowledgement. Merrimac Solutions, Inc. hereby acknowledges and agrees that:

- (a) Neither Merrimac Solutions, Inc. nor any of its Consultants is an employee of Client Company.
- (b) Neither Merrimac Solutions, Inc. nor any of its Consultants are entitled to any benefits provided or rights granted by Client Company to their respective employees, including but not limited to, group insurance, liability insurance, disability insurance, paid vacation, sick leave, retirement plans, health plans, stock plans, and the like.
- (c) Client Company shall not make deductions from fees paid for any federal or state taxes or FICA.

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- (d) Client Company shall not have any obligation to provide worker's compensation coverage for Consultants or to make any premium overtime payments at any rate or term other than the rate schedule agreed to in the Agreement or Work Memo.

Limitation of Liability. EXCEPT FOR BREACHES OF CONFIDENTIALITY OR BREACHES RELATING TO INTELLECTUAL PROPERTY, IN NO EVENT WILL EITHER PARTY HERETO HAVE ANY LIABILITY OR RESPONSIBILITY FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Warranty. Merrimac Solutions, Inc. warrants all workmanship in accordance to a Work Memo for a period of 30 days of the completion of the project to assure that the systems implemented are what were ordered. This warranty covers work on systems related to the Work memo and only covers implementations that are delivered by Merrimac Solutions, Inc. so that the systems implemented are in accordance with the Work Memo. Merrimac Solutions, Inc. does not warranty the functionality of any system, application, desktop or server. Further, as a sub-contractor Merrimac Solutions, Inc. does not retain control over the process of sale, consulting or design of the Client Company's project and therefore, Merrimac Solutions, Inc. does not provide a warranty to client satisfaction. This warranty of workmanship does not negate the above mentioned Limitation of Liability.

Client Requirements. Due to the nature of the relationships, Merrimac Solutions, Inc. Consultant who is scheduled to perform work for the Client Company, may, at the discretion of the Client Company, undergo a background verification and/or drug screen.

Merrimac Solutions, Inc. hereby agrees to submit Consultants to this form of compliance examination on request, however, the cost for such background checks and testing shall be borne by the Client Company.

Communication with Assigned Client. Unless otherwise directed by Client Company or as necessary to perform day to day activities, Merrimac Solutions, Inc. agrees to work exclusively through Client Company for all communication.

Court Separability/Modification. The invalidity or unenforceability, in whole or in part, of any provision, term or condition hereof shall not affect the validity or enforceability of the remainder of such provision, term or condition or of any other provision, term or condition. If any restrictions as written in this Agreement are deemed by any court to be overly broad and thus unenforceable, the court may rewrite the restriction to the fullest extent allowable by law to make the restriction enforceable.

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Notices. All notices and other communications in connection with this Agreement shall be in writing and shall be deemed to have been received by a party three (3) days after mailing to each party at the address shown below:

City of Aurora
Ted Beck
Chief Information Officer
44 East Downer Place
Aurora, IL 60506

Merrimac Solutions, Inc.
John Quinn
Principal
2245 Sequoia
Aurora, IL 60506

Entire Agreement. This Agreement and any incorporated Work memos constitute the entire agreement between Merrimac Solutions, Inc., and the Client Company. In the event that any provisions in any Work Memo are in conflict with the provisions in this Agreement, then the provisions in the Work Memo shall prevail over any such conflicting provisions, with the exception of the listed rate schedule that shall apply in all cases unless otherwise specified and agreed in writing by both parties.

Future Amendments. This Agreement may be amended providing such future amendments are in writing and signed by both parties hereto. Should this Agreement be so modified, such modifications shall supersede the relevant provisions of this Agreement and shall take effect at the time of execution of the modification. All other terms of the Agreement not in conflict with the modification shall remain in effect as written.

Miscellaneous.

- a. **No Waiver.** Neither Merrimac Solutions, Inc. nor Client Company's waiver on any occasion of any provision of this Agreement, nor either party's failure on any occasion to enforce their rights under any provision of this Agreement shall be construed as a waiver of that provision or their rights there under as to any future occasion.
- b. **Binding Effect, Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the Client Company and Merrimac Solutions, Inc. successors and assigns. Nothing in this Agreement shall be construed to permit the assignment by either party of any of its rights or obligations hereunder, and such assignment is expressly prohibited without the prior written consent of the other party.

Governing Law. The parties hereby submit to the jurisdiction and venue of the Courts of the State of Illinois to enforce the terms hereof without giving effect to the principals of conflict of law. This Agreement shall be binding upon and shall inure to the benefit of the parties and their successors, personal representatives, and legatees. Venue is proper in any circuit court in Kane County, Illinois or federal district court in Illinois.

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By signing below, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date set forth above.

City of Aurora, IL

Sign: _____

Print: _____

Title: _____

Date: _____

Merrimac Solutions, Inc.

Sign: John D. Quinn

Print: John D. Quinn

Title: Principal

Date: 1/27/2014

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Ongoing Statements of Work

- Merrimac Solutions will provide a “Statement of Work” for each individual project.
- The Client Company shall ensure the availability of designated client network and server engineering resources for the duration of the project to assist as needed.
- The Client Company shall provide to Merrimac Solutions, Inc. consultant(s) all necessary physical, remote and administrative login access to technical infrastructure-including, but not limited to any physical and/or virtual environments that pertain to this engagement (domain[s], server[s], firewall[s], data center[s], wiring closet[s], etc.) throughout the duration of the engagement.
- All work will be performed during Merrimac Solutions, Inc. normal business hours (8:00 AM CST to 5:00 PM CST, Monday to Friday) unless expressly stated otherwise in this document. Local time zone is used when outside of CST.
- If required information proves difficult to obtain or unavailable, the Client Company and Merrimac Solutions, Inc. will work together to mutually arrive at pertinent and appropriate engagement assumptions or additional fee-based services may be utilized to gather required information. Either of these options may impact the time required to complete the engagement and costs therein.
- If implementing application virtualization, Merrimac Solutions, Inc. will spend no more than 6 hours working to implement any specific application to the environment. It will be the client’s full responsibility to assure compatibility for user applications and devices hosted within the environment. Lack of compatibility will not delay completion of the project or payment for services.
- The project shall be considered complete when Merrimac Solutions, Inc. has implemented a solution which meets the success criteria agreed upon in each SOW.
- Merrimac Solutions, Inc. shall provide service to the Client Company on an agreed upon schedule (specified in the Work Memo) until the project is completed or until either party terminates this Work Memo. The contents of this Work Memo including but not limited to Merrimac Solutions, Inc. hourly rate of \$150 per hour for Systems Integration work, are confidential between Client Company and Merrimac Solutions, Inc. and shall not be divulged by either party or any of its representatives or personnel to any other party, unless required by law.
- For the Staff Augmentation and the PC Helpdesk role the hourly rate of **\$28** per hour is confidential between Client Company and Merrimac Solutions, Inc. and shall not be divulged by either party or any of its representatives or personnel to any other party, unless required by law. **This agreement allows for an annual increase of up to 5% of the hourly rate.**
- Merrimac Solutions, Inc. shall submit to Client Company at the end of each weekly period an invoice. Client Company agrees to pay Merrimac Solutions, Inc. pursuant to terms in the Master Services Agreement.
- Client Company agrees to pay each statement on receipt thereof and in accordance with the agreed terms as noted in this Work Memo. Client Company agrees to be liable for and pay a

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late fee equal to one-and-one-half percent (1 ½%) per month on the outstanding balance of undisputed fees.

- In the event that Merrimac Solutions, Inc. shall withdraw, or be discharged by Client Company, Client Company agrees to promptly pay at such time for any previously rendered services or unreimbursed costs or expenses outstanding on undisputed bills.

By signing below, the parties agree to the terms of this Work Memo.

City of Aurora, IL

Merrimac Solutions, Inc.

Sign: _____

Sign: 

Print: _____

Print: John D. Quinn

Title: _____

Title: Principal

Date: _____

Date: 1/27/2014