



Master Services Agreement

(ver. 2023.03)

This Master Services Agreement ("MSA") is made between Acture Solutions, Inc. ("Acture Solutions"), a New York Corporation having its main offices at 453 New Karner Road, Albany, NY 12205 and Our Valued Client ("Client") that accepted the Quote(s) for Services. (each a "Party" and, collectively, the "Parties").

- 1. Term of Agreement:** This Agreement will be effective as of the date set forth on the applicable Quote and will continue for a period of one (1) year ("Initial Term") and shall automatically renew for successive one (1) year periods (each a "Renewal Term") (collectively, the "Term").
- 2. Services Provided:** Acture Solutions agrees to provide to Client, on a timely basis, the services described in the applicable Exhibit(s) and any Statement of Work ("SOW") referenced in an applicable Quote and executed by the Parties (the "Services"). Services will commence on the Effective Date or, if otherwise stated, per the terms and conditions of the applicable Quote and SOW. Acture Solutions and Client may amend or change this Agreement or the scope of any SOW by a written agreement signed by both Parties. Any such document shall be deemed an amendment to this MSA or the applicable SOW, and all other terms of this contract shall still apply. No Services will be provided under this Agreement alone; Services require a SOW, and a mutually acceptable Quote, each of which must be executed by both Parties and both of which are incorporated herein by reference. It is acknowledged and agreed that the Parties may execute multiple Quotes and SOWs under this Master Services Agreement. To the extent that Acture Solutions recommends or offers a Service to the Client that would improve its network functionality or network security and the Client declines such Service, Acture Solutions shall have no liability whatsoever for any damage that a declined service could have prevented.
- 3. Client Obligations:** Except as provided in this Agreement or included in a SOW, Client shall provide the hardware, software, materials, information, and access to Client's facility as are necessary for Acture Solutions to render the Services. Client shall provide a suitable working environment for any Equipment located at Client's facility. Such environment includes but is not limited to the appropriate temperature, static electricity, humidity controls, and adequately conditioned electrical supply for each piece of Equipment. Client shall bear the risk of loss of any Equipment located at Client's facility. Unless specifically ordered under this Agreement and included in an executed SOW, Client shall be responsible for the application, operation, maintenance, and support of its systems, hardware, and software, including, but not limited to, the implementation of appropriate procedures, training, safeguards, and routine backups. Similarly, unless specifically ordered under this Agreement and included in an executed SOW to the extent that Acture Solutions or any third-party manufacturer requires any preventative maintenance with respect to the Services, Client shall be responsible for such maintenance. To the extent required by Acture Solutions, Client shall provide a reasonable amount of secure space at Client's facility for storage by Acture Solutions of materials.
- 4. Status of the Parties:** The Parties acknowledge and agree that Acture Solutions status is that of an independent contractor and not an agent or employee of the Client for any purposes. Acture Solutions shall perform the Services relying on its experience, knowledge, judgment, and techniques. Acture Solutions may, upon prior notice to Client and in its sole discretion, hire subcontractors to assist in the performance of the Services at Acture Solutions expense.
- 5. Intellectual Property:** Each Party owns or licenses from third Parties certain intellectual property, and this Agreement does not transfer any ownership, any right to use or license, or any interest of any kind, in such existing intellectual property of either Party, except as may be agreed upon by the Parties and specifically described in the attached Exhibits.
- 6. Service Coverage:** All requests for remote service work are billed in fifteen (15) minute increments. Emergency After- hours rates apply outside of regular business hours and will be charged at 1.5x the Standard billing rate enumerated in the Quote. All after-hours service requests are subject to a minimum (2) two hours charge. All on-site service calls are subject to a minimum two (2) hour charge for each visit. For travel over one (1) hour, additional travel time will be billed in fifteen (15) minute increments at Acture Solutions Standard billing rates. Block Hours for the advance purchase of service and support hours may be purchased at discounted hourly rates as set forth in a Quote/Purchase Order. Any such purchase will be subject to the Block Hours Agreement, which will be attached to and incorporated herein by reference if such Block Hours are ordered.

7. Pricing and Payment: Pricing for all Services provided under this Agreement is provided in a separate Quote and will not include federal, state, or local taxes as applicable. These taxes will be added to the sales price when Acture Solutions is legally obligated to collect the taxes unless the Client provides Acture Solutions with a proper tax exemption certificate. All Quote(s) are subject to correction for stenographic, typographic, and clerical errors.

Terms of payment are net due upon receipt of invoice. Client agrees to pay a delinquency charge of 1 ½% per month up to 18% per annum unless otherwise limited in accordance with an applicable state law, on any outstanding balances more than ten (10) days past due by Client from the date of invoice until Client renders payment in full. If Acture Solutions is required to pursue legal action against Client (whether or not suit is filed) to collect any amounts owed by Client to Acture Solutions, Client agrees to pay Acture Solutions expenses, including reasonable attorneys' fees, incurred because of, or arising out of, the legal action.

8. Confidential Information: For purposes of this Agreement, the term "Confidential Information" shall mean all non-public information of either Party, whether or not marked as confidential or proprietary, including, without limitation, client lists, client information, supplier lists, financial information, contractual information, designs, pricing information, internal business organization information, marketing, business and expansion plans and all other business documents, notes, records, research and development, intellectual property, technologies, processes, procedures, programs, systems, products and methods of either Party, and all written, oral or electronic information concerning any of the preceding. Confidential Information shall not include any information which (a) was in the public domain at the time it was disclosed, or thereafter enters the public domain through no fault of the Party alleging violation of this Section; (b) was available to a Party at the time of disclosure to that Party, or thereafter becomes known by that Party, on a non-confidential basis; (c) information which is independently developed by either Party without use of or reference to the other Party's Confidential Information; or (d) is disclosed or used by a Party with the other Party's advance written approval.

The Parties acknowledge that in the course of Acture Solutions rendering the Services, the Parties will be exposed and may have access to each other's Confidential Information. The Parties shall protect each other's Confidential Information with the same degree of care as they use to protect their own Confidential Information but no less than a reasonable degree of care. In addition, the Parties hereby agree that during the Term and at all times after the termination or expiration of this Agreement, they shall: (a) hold the Confidential Information in trust solely for the benefit and use of the other Party; (b) not directly or indirectly sell, transfer, assign, disclose or divulge Confidential Information to any person or entity without the prior written permission of the other Party; and (c) not directly or indirectly use Confidential Information for any purpose other than the fulfillment of their obligations under this Agreement. Except as otherwise provided herein, upon the expiration or termination of this Agreement, the Parties will, upon request, return or certify the deletion of all records, files and other documents, or copies thereof of the Confidential Information then in their possession. Notwithstanding anything contained herein, Acture Solutions may, in its sole discretion, retain one (1) copy of any such Confidential Information for archival purposes.

Disclosure of Confidential Information by a Party in accordance with judicial or governmental order shall not constitute a violation of the terms of this Section, provided the Party making such disclosure shall give the other Party reasonable notice prior to such disclosure, shall comply with any applicable protective order or equivalent, and shall maintain the confidentiality of all Confidential Information other than the disclosure required.

9. Clients covered by NYS Education Law: Acture Solutions, being mindful of the privacy rights of students, faculty, and staff in the district, agrees to strictly maintain the confidentiality of all Client information it receives, if any, in the performance of the services under this Agreement. If Acture Solutions actually receives student, teacher, and/or principal data as the terms are defined under Section 2-d, Acture Solutions agrees to comply with Sections 2-c (if applicable) and 2-d of the New York State Education Law with respect to the privacy requirements applicable to confidential student, teacher and/or principal data. Acture Solutions maintains a Data Security and Privacy Plan with respect to the protection of Data, provides training to employee(s) who will have access to Data, and otherwise fulfill its obligations pursuant to Section 2-d and applicable law.
10. Non-Solicitation: During the term of this agreement and for a period of twelve (12) months thereafter, Client agrees not to solicit, recruit, or employ any employee of Acture Solutions without the prior written consent of Acture Solutions. Acture Solutions hereby agrees that it will not solicit, hire, or retain, in any capacity whatsoever, any of Client's employees without written consent from Client.
11. Warranties: Acture Solutions hereby warrants that the Services provided and any products or materials installed by Acture Solutions shall be performed or installed by Acture Solutions in a professional, workmanlike manner, consistent with generally prevailing industry standards, and in compliance with the requirements of this Agreement.

Client acknowledges that any products and materials supplied by Acture Solutions may be manufactured or created by third parties and are subject to such warranties as may be provided by the third-party manufacturer.

EXCEPT AS STATED IN THIS AGREEMENT, ACTURE SOLUTIONS DOES NOT MAKE, AND HEREBY DISCLAIMS, ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, INTEROPERABILITY, AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. ACTURE SOLUTIONS DOES NOT WARRANT THE WORK AND SERVICE PROVIDED HEREUNDER WILL BE UNINTERRUPTED AND/OR ERROR FREE. ACTURE SOLUTIONS DOES NOT MAKE AND HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES AGAINST LOSS OF DATA, SECURITY BREACHES, THIRD PARTY INTERRUPTION OR INTERFERENCE WITH DATA OR NETWORKS, AND EXPOSURE OR RELEASE OF PERSONALLY IDENTIFIABLE INFORMATION, REGARDLESS OF CAUSE. ALL WARRANTIES PROVIDED HEREIN ARE PERSONAL TO, AND INTENDED SOLELY FOR THE BENEFIT OF CLIENT, AND DO NOT EXTEND TO ANY THIRD PARTY. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, CLIENT ACKNOWLEDGES THAT ACTURE SOLUTIONS SHALL BEAR NO RESPONSIBILITY FOR THE PERFORMANCE, REPAIR OR WARRANTY OF ANY OF CLIENT'S SOFTWARE, HARDWARE PRODUCTS OR SERVICES PROVIDED TO CLIENT OR BY A THIRD PARTY, UNLESS OTHERWISE SET FORTH HEREIN.

All warranties shall be null and void, and Acture Solutions shall have no further obligation or liability under this warranty, or otherwise, if a material nonconformity from the relevant specifications results from: (i) Client's use of any materials, products, services, systems, or work product supplied by Acture Solutions in a manner inconsistent with the documentation and instructions provided by Acture Solutions; (ii) alterations or modifications made by Client or a Client representative without the written approval of Acture Solutions; (iii) defects in any third party product, including failure of a computer program to operate in accordance with specifications; (iv) malfunctions of Client's computer hardware or system environment occurring through no fault of Acture Solutions; (v) storage, operation, use or maintenance by Client any materials, products, services, systems, or work product in a manner or an environment inconsistent with the specifications and instructions of Acture Solutions; (vi) Client's failure to use corrections or enhancements made available by Acture Solutions; (vii) Client's use of any materials, products, services, systems, or work product in combination with any product, service, or material not provided by Acture Solutions.

If, during the term of this Agreement, Client reports that Acture Solutions provides any Services in a manner that Client feels does not conform with the warranties provided, Acture Solutions shall, at no cost to Client, reperform such services in a manner consistent with such warranties. THE FOREGOING STATES THE ENTIRE LIABILITY OF ACTURE SOLUTIONS AND THE SOLE AND EXCLUSIVE REMEDIES OF CLIENT WITH RESPECT TO ANY BREACH OF ANY WARRANTY PROVIDED BY ACTURE SOLUTIONS HEREUNDER.

12. Indemnification: Client will indemnify, defend, and hold harmless Acture Solutions from and against any claims, suits, judgments, proceedings, losses, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of or relating to: (i) the negligent or willful misconduct of Client; or (ii) Client's breach of any provision of this Agreement. Acture Solutions shall promptly notify Client of the liability claim, and provide Client all necessary information to evaluate, defend, and settle the claim.
13. Limitation of Liability: EXCEPT IN CONNECTION WITH CLIENT'S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR THEIR EMPLOYEES, AGENTS OR CONTRACTORS, OR ANY THIRD PARTY, FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, OR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. FURTHER, IN NO EVENT SHALL ACTURE SOLUTIONS LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE AMOUNTS ACTUALLY PAID BY CLIENT TO DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO LIABILITY.
14. Equitable Relief: The Client acknowledges that any breach of any provision of this Agreement regarding confidentiality or ownership of intellectual property cannot reasonably or adequately be compensated in damages in an action at law and will cause irreparable harm and significant injury and damage. Therefore, the Acture Solutions shall be entitled, in addition to any other remedies Acture Solutions may have under this Agreement or otherwise, to immediate preliminary, interim, and permanent injunctive or equitable relief to prevent or curtail any actual or threatened breach of such Sections without needing to post any bond.
15. Cyber Insurance: Client shall secure and maintain for the duration of this Agreement Cyber Liability Insurance to insure Client's cyber exposures. Specific limits and coverages should be evaluated by a qualified insurance broker or risk manager to determine Client's specific coverage and policy limit requirements. Client shall ensure such Cyber Liability Insurance names Acture Solutions as an additional insured and must provide Acture Solutions evidence of the same.
16. Client Cyber Security: It is understood that the Services provided under this Agreement are limited only to those articulated in a SOW executed between the Parties. If the Client elects to obtain cybersecurity services under a SOW, Acture Solutions shall provide reasonable industry-standard physical, administrative, and technical safeguards that will evolve with emerging threats to reasonably protect Client's systems and data, from unauthorized access. Client agrees and understands that cybersecurity services are constantly evolving and that these services may require ongoing changes to the SOW in order to remain current. Client also understands and acknowledges that cybersecurity services cannot prevent all possible cybersecurity incidents due to their constantly evolving nature.

Recommendations or requests from Acture Solutions that impact cybersecurity services are made on a time is of essence basis and Client agrees to treat such recommendations or requests as high priority material elements of this Agreement and any SOW issued hereunder. DUE TO THE CONSTANT EVOLVING NATURE OF CYBER THREATS, NEITHER THIS AGREEMENT NOR ANY SOW CONSTITUTE AN ABSOLUTE GUARANTEE REGARDING THE SECURITY OF CLIENT DATA.

17. Installation: To the extent that any products or materials are to be installed by Acture Solutions, Acture Solutions shall install such products or materials as specified in this Agreement. Installation dates are estimates only. Unless otherwise specified in Quote(s) or SOWs Client shall be responsible for, and Acture Solutions shall have no liability regarding, coordination of all other contractors, if any, involved in the project; preparation and maintenance of the site for installation, including, but not limited to, relocation of existing hardware or fixtures, any special flooring or surface preparation, providing necessary electrical power and circuit protection, communication lines and proper air conditioning and humidity control, and disposal of all refuse from the installation site.
18. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to its principles of conflicts of laws. Both Parties consent to the exclusive jurisdiction and venue of any court within the State of New York in connection with any dispute arising out of, or in connection with this Agreement.
19. Dispute Resolution: Both Parties agree during a thirty (30) day period after notice is given to the other Party of a dispute under the terms of this Agreement, to use their best efforts to resolve any dispute through good faith negotiations. Any dispute arising from this Agreement that has not been resolved after a thirty-day period of good faith negotiations, may be filed in any court of competent jurisdiction in the State of New York. Further, the Parties acknowledge and agree: (1) any claims brought by either Party under this section must be brought in the Parties' individual capacity, and not as a plaintiff or class member in any purported class, collective, or representative proceeding; and (2) they hereby expressly waive any right to trial by jury.
20. Termination: This Agreement or any SOW may be terminated at any time by giving thirty (30) days prior written notice to the address provided in this Agreement, or such other address as may later be provided by either Party. Termination of this Agreement will terminate all applicable SOWs then in effect and be subject to any and all applicable costs, expenses, and/or charges as set forth therein. Acture Solutions may terminate this Agreement and/or any or all SOW's immediately: (a) if Client fails to pay any applicable fees due for any SOW within ten (10) days after receipt of written notice from Acture Solutions of non-payment; or (b) if Client commits any other breach of this Agreement and fails to cure such breach within ten (10) business days after receipt of written notice from Acture Solutions. If a SOW is terminated, Client will pay Acture Solutions for Services rendered within ten (10) days of the effective date of such termination, and all expenses and reasonable termination costs incurred through the termination date.
21. Promotion: Acture Solutions may, in its public advertising and promotional materials, reference Client and the services provided to Client, subject to Client's prior approval which shall not be unreasonably withheld.
22. Notices: All formal notices or demands shall be in writing and shall be deemed effectively given upon personal delivery or, if mailed, by prepaid certified mail return receipt requested, to the notice addresses shown in the Quote and SOW documents and if to Acture Solutions at the address below. Either Party may change its notification address by giving the other Party prior written notice of the new address and the effective date. Notices to Acture Solutions should be sent to:

Acture Solutions, Inc.
453 New Karner Road
Albany, NY 12205
23. Assignment: Client may not assign or transfer its rights or delegate its obligations under this Agreement without the prior written consent of Acture Solutions, which consent shall not be unreasonably withheld. Any assignment without Acture Solutions consent shall be null and void.
24. Force Majeure: Any delay or failure of a Party to perform its obligations will be excused if and to the extent that it was caused by an event or occurrence beyond such Party's reasonable control and without its fault or negligence ("Force Majeure"). A Party claiming Force Majeure must provide the other Party with written notice of such delay (including the anticipated duration of the delay) within ten (10) days of the occurrence of Force Majeure event.
25. Modification & Waiver: The Parties may by mutual agreement, amend any provision of this Agreement, and either Party may grant, consent, or waive any right to which it is entitled, provided that each such amendment, consent, or waiver shall be in writing and executed by both Parties. No failure or delay by either Party in exercising any right, power or remedy hereunder shall operate as a waiver.

26. Severability: If any provision or portion of this Agreement should be held unenforceable or invalid, such provision shall be modified or deleted in such a manner as to make this Agreement as modified, legal and enforceable to the fullest extent permitted under applicable laws.
27. Entire Agreement: This Agreement together with the Quote(s), SOW(s) and any attached Exhibit(s) constitutes the entire agreement between the Parties with respect to the subject matter and supersedes all prior agreements, understandings, and negotiations, whether oral or written, between the Parties. In the event of a conflict in the provisions of a Quote, SOW or any exhibits hereto and the provisions set forth in this Agreement, the provisions of this Agreement shall govern. In the event Client submits any purchase order or similar document containing any provisions inconsistent with this Agreement, such provisions shall have no effect and the provisions of this Agreement shall control.