

## **MASTER SERVICES AGREEMENT**

This MASTER SERVICES AGREEMENT (“MSA”) is entered into by and between Modigie Inc., a California corporation with a principal place of business at 36 Main St., Tiburon, CA 94920 (“Modigie”) and you, the customer (“Customer”) (each a “Party” and collectively the “Parties”). By your indication of consent, including consent indicated by use of the Services (as defined below), you agree to be bound by the terms and conditions set forth herein.

**1. AGREEMENT.** This MSA and any Modigie Order Forms or statements of work appended hereto (collectively “Order Form(s)”) shall control the delivery of Services (as defined below) to Customer by Modigie. Terms that are not defined herein or in a Order Form shall be defined in the context in which they are used.

**2. SERVICES.** Modigie shall provide to Customer the services set forth in the attached Order Form(s) (individually and collectively the “Services”) pursuant to the terms and conditions herein and in the applicable Order Form. Each Order Form shall incorporate by reference, and be governed by, the terms and conditions of this MSA and shall, together with this MSA, form a separate, binding agreement between the Parties.

**3. TERM & TERMINATION.** This MSA shall continue in force and effect until the date on which the term of the last effective Service Order terminates, unless earlier terminated in accordance herewith. Either Party may terminate this MSA or a Order Form by written notice in the event that the other Party breaches this MSA or a Order Form and such breach is not cured within thirty (30) days of written notice thereof, except a breach of the Confidentiality provisions, in which case the non-breaching party may terminate immediately upon written notice. Provided, however, that a breach of the MSA or Order Form with respect to one Service shall not constitute a breach of other Services and the MSA and such other Order Forms shall remain in full force and effect. Modigie may immediately terminate the MSA or a Order Form upon written notice if Customer: (a) becomes or is declared insolvent or bankrupt; (b) is the subject of any proceeding related to voluntarily or involuntarily liquidation or insolvency which is not dismissed within ninety (90) Days; or (c) makes an assignment for the benefit of creditors.

**4. USE OF ONLINE SERVICES.** The Services are to be used solely for Customer’s internal business purposes only and are not for resale to any third party or use on a service bureau basis. In order to provide the Services, Customer may be required to connect to Modigie’s systems or network (“Modigie Network”). Customer shall only use the Modigie Network for the lawful business purposes outlined in the applicable Order Form. Customer shall not use or allow use of the Modigie Network in a manner that interferes with the use of the Modigie Network by Modigie or by any other authorized, third party user. Unless otherwise provided for in a Order Form, Customer shall have sole responsibility for the expenses associated with deployment of any hardware or software necessary to access the Modigie Network.

**5. FEES & PAYMENT TERMS.** Customer shall pay all fees set forth in the Order Form(s). Unless otherwise provided for in a Service Order, Modigie shall render invoices to Customer on a monthly basis and shall bill for the Services in arrears. Payment shall be due no later than thirty (30) days after the date of the invoice. If Customer has authorized Modigie to charge Customer’s credit card, Modigie shall charge applicable fees to Customer’s credit card and Modigie shall not issue an invoice. Customer agrees to pay for the Services for the duration of the term of the applicable Order Form unless earlier terminated for breach by Modigie or as provided therein. In the event Customer in good faith disputes any fees on an invoice, Customer must notify Modigie in writing of the reasons for, and the amount of, such dispute, within thirty (30) days of the date of invoice. In such event, Customer may only withhold payment of the amount in dispute and shall pay all undisputed amounts when due. Unless subject to a good faith dispute, amounts not paid when due shall be assessed interest at a monthly rate equal to one and one half percent (1.5%) or the maximum rate allowed by law, whichever is less, calculated from the date the payment was due. All invoices shall be paid in U.S. dollars. If Modigie commences legal proceedings to collect any payment and prevails, Customer shall pay Modigie’s reasonable attorneys’ fees, court costs and other collection expenses.

**6. TAXES.** All fees for Services are calculated exclusive of any federal, state or local sales, excise, value-added or similar taxes. Any taxes or similar liabilities, however denominated, that may now or hereafter be levied on the Services which are chargeable to Customer by any government authority, shall be paid by Customer. Should Modigie be required to pay or pays these liabilities, Customer shall reimburse Modigie for such payments upon receipt of an invoice and showing of indebtedness from Modigie.

**7. SERVICE CHANGES.** Modigie may make upgrades or changes to the Services which will not materially diminish the functionality of the Services without prior notice to Customer. In the event that a change to the Services would, in Modigie’s reasonable discretion, permanently, materially diminish or impair the functionality of the Services (“Change”), Modigie shall provide Customer with written notice at least sixty (60) days prior to the date the Change is to take effect. If the Change is unacceptable to Customer, Customer may terminate the relevant Order Form without penalty by providing written notice to Modigie at least thirty (30) days prior to the date the Change is scheduled to take effect. Any use of the Services by Customer after the effective date of the Change will be deemed acceptance of the Change by Customer. Modigie may discontinue a Service at any time upon ninety (90) days prior written notice, provided that such right shall not be utilized by Modigie as a termination for convenience, but shall only be used where such discontinuance would apply to all or substantially all of Modigie’s customers.

**8. INTELLECTUAL PROPERTY.** Each Party retains all right, title and interest in and to its intellectual property. No licenses will be deemed to have been granted by either Party to any of its intellectual property except as expressly authorized in a Order Form. Customer acknowledges that it has no proprietary interest in the Services, including, but not limited to, the servers, software, or data used by Modigie in the provision of the Services. Unless otherwise set forth in a Order Form, all right, title and ownership to any software (both in object code and source code format), hardware or know-how which Modigie licenses or develops to provide the Services (collectively, "Modigie Intellectual Property") is owned exclusively by Modigie or its licensors. Customer agrees not to, modify, copy, or reverse engineer the Services.

**9. CONFIDENTIALITY.** Each Party shall take reasonable precautions to prevent unauthorized disclosure of the Confidential Information of the other Party. "Confidential Information" shall mean information marked as "Confidential" at or before the time of disclosure or which by its nature, or the manner of its disclosure would be reasonably understood to be Confidential, including without limitation any information related to Customer's or its affiliates' hardware, software, or systems. No restriction shall apply with respect to Confidential Information which: at the time of disclosure, was in the public domain or in the possession of the receiving Party ("Receiver"); becomes publicly known through no fault of the Receiver; was received after disclosure from a third party who had a lawful right to disclose such information to the Receiver without any obligation to restrict its further disclosure; or is independently developed by the Receiver without use of the Confidential Information and without the participation of individuals who have had access to the Confidential Information. The Receiver may make disclosures required by court order provided the Receiver uses diligent efforts to limit disclosure and, upon request by the disclosing Party ("Discloser"), assists the Discloser in obtaining confidential treatment or a protective order. A Party receiving a court order to disclose Confidential Information shall, to the extent that it may legally do so, immediately advise the Discloser prior to making such disclosure so that the Discloser may take such other action it deems appropriate to protect the Confidential Information. In the event of any disclosure or loss of Confidential Information of the Discloser, the Receiver shall promptly and at its own expense notify the Discloser in writing and act and reasonably cooperate with the Discloser to minimize any damage resulting therefrom. The obligations set forth herein shall survive the expiration or termination of this MSA for a period of three (3) years or such longer period as required by law, regulation, or court order. The Receiver shall return or destroy the Confidential Information upon request of the Discloser.

**10. USE OF NAME & TRADEMARKS.** Neither Party shall use the trademarks or service marks of the other Party in any advertising, promotional or marketing materials without such other Party's prior written consent.

**11. REPRESENTATIONS, WARRANTIES & DISCLAIMERS.** Each Party represents and warrants that it has the requisite corporate power and authority to enter into this MSA and Order Forms and to carry out the transactions contemplated hereunder. Each party represents and warrants that it will comply in all respects with the export restrictions applicable to any hardware, software and technology delivered to the Customer hereunder and will otherwise comply with the applicable United States laws and regulations in effect during the term.

Modigie DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR SECURE AND DOES NOT WARRANT THE SERVICES AGAINST MALFUNCTION OR CESSATION DUE TO CESSATION OR MALFUNCTION OF ANY INTERNET SERVICE PROVIDER OR ANY OF THE THIRD PARTY NETWORKS THAT FORM THE INTERNET. EXCEPT AS SET FORTH HEREIN, ALL SERVICES AND EQUIPMENT ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND Modigie MAKES NO WARRANTIES TO CUSTOMER OR TO ANY THIRD PARTY INCLUDING, WITHOUT LIMITATION, END USERS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BY WAY OF EXAMPLE, WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR RESULTS TO BE OBTAINED FROM USE OF THE SERVICES, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

Modigie DOES NOT WARRANT OR REPRESENT THE ACCURACY, COMPLETENESS, COVERAGE, PERMISSIVE USE, OR SOURCE OF ANY DATA SERVICE, DATABASE, DATA RECORDS OR ANY OTHER DATA PRODUCT PROVIDED BY Modigie to Customer.

**12. LIMITATION OF LIABILITY.** IN NO EVENT SHALL Modigie, BE LIABLE FOR ANY LOST PROFITS, LOST DATA, OR LOST EQUIPMENT, ANY WEBSITE OR NETWORK DOWNTIME, COST OF PROCURING SUBSTITUTE SERVICES OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER ARISING, WHICH ARE RELATED TO THIS MSA OR A Order Form AND THE PROVISION OF SERVICES HEREUNDER, EVEN IF Modigie HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR BREACH OF ANY TERM FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH SHALL BE THE EXCLUSIVE REMEDY OF CUSTOMER AND Modigie'S SOLE LIABILITY. EXCEPT FOR Modigie'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL Modigie'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER FOR ANY DIRECT DAMAGES EXCEED AMOUNTS ACTUALLY PAID BY CUSTOMER TO Modigie IN CONNECTION WITH THE CONTESTED SERVICE OVER THE PRECEDING TWELVE (12) MONTHS FROM THE TIME THE EVENT RESULTING IN LIABILITY OCCURS.

**13. INDEMNIFICATION.** Each Party will indemnify, defend and hold harmless any action brought against the other Party, its directors, officers, members or employees (i) for breach of warranty contained herein or in a Order Form; and (ii) as provided for in any Service Order. Upon receiving notice of any claim covered by the indemnity obligations set forth in the MSA or a Order Form, the indemnified Party ("Indemnified Party") shall promptly notify the indemnifying Party (the "Indemnifying Party") in writing of the claim. The

Indemnifying Party may assume sole control of the defense of any such claim. The Indemnified Party may, at its own cost and expense, participate through its attorneys or otherwise, in such investigation and defense. If the Indemnified Party does not participate in the investigation and defense of the claim, the Indemnified Party shall provide the Indemnifying Party reasonable assistance regarding such claim at the Indemnifying Party's expense. The Indemnifying Party will pay those costs and damages, including reasonable attorneys' fees, awarded against the Indemnified Party by a court of competent jurisdiction in any such action that is specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. Unless such settlement is solely for monetary damages for which the Indemnified Party is fully indemnified hereunder, the Indemnifying Party shall not settle any such claim without the Indemnified Party's prior, written consent, which shall not be unreasonably withheld or delayed.

#### **14. GENERAL.**

**14.1 Assignment.** Customer may not assign this MSA or an Order Form without the written permission of Modigie and any violation hereof shall be a breach hereof and will be void *ab initio*.

**14.2 Notices.** Any other notice required under this MSA or a Order Form, other than routine operational communications, shall, if to Customer, be sent to Customer address provided by registration for the Service and, if to Modigie, be sent to Modigie at the address set forth above marked "Attention: General Counsel. Notices shall be deemed given: (a) one (1) business day after being transmitted with delivery costs paid via an express, overnight courier with delivery tracking; (b) upon delivery when sent by confirmed facsimile with a copy delivered by another means specified in this Section; or (c) upon delivery when an authorized employee of the receiving Party accepts receipt in writing, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid. A Party may change its address or designee for notice purposes by giving prior written notice of such and the date upon which it will become effective. Modigie may contact Customer via e-mail and/or mail concerning routine operational communications, Service changes, upgrades, new Services or other relevant information.

**14.3 Counterparts.** This MSA and Order Forms may be executed in counterparts which together constitute an agreement.

**14.4 Relationship of Parties.** The Parties are independent contractors and nothing herein creates a relationship of partnership, employer and employee, or principal and agent. Neither Party has the authority to bind, act on behalf of, or represent the other.

**14.5 Severability and Modification.** If any provision of this MSA or a Order Form is adjudged by a competent authority to be invalid, void or unenforceable under applicable law, such provision will be modified or eliminated to the minimum extent necessary to effect the intent of the Parties and the remainder of the provision will not be affected thereby and will continue in full force and effect.

**14.6 Waiver of Default.** No waiver or discharge hereof shall be valid unless in writing and signed by the Party against which such amendment, waiver, or discharge is sought to be enforced. A delay or omission by either Party to exercise any right or power under the MSA or an Order Form shall not be construed to be a waiver thereof. A waiver by either of the Parties of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant.

**14.7 Amendments.** No alteration, amendment, waiver or other change in any term or condition of this MSA or an Order Form shall be binding unless mutually assented to in writing by an authorized representative of each Party.

**14.8 Survival.** Any provision of the MSA or a Order Form which contemplates performance or observance subsequent to any termination or expiration (in whole or in part) shall survive any such termination or expiration and continue in full force and effect, such to include specifically Sections 6, 8, 9, 11, 12, 13, and 14.

**14.9 Third Party Beneficiaries.** Unless expressly provided for otherwise, this MSA or an Order Form shall not be deemed to create any rights in third parties, including end users, of a Party, or to create any obligations of a Party to third parties.

**14.10 Export Control.** Modigie is subject to regulation by agencies of the United States Government, including regulations which prohibit export of certain equipment, technology, hardware and software to certain countries. Any obligations of Modigie to Customer hereunder shall be subject to, and if applicable, limited by, such laws and regulations.

**14.11 Governing Law.** The MSA and Order Forms shall be governed by, and construed in accordance with, the laws of the State of California, without regard to its conflict of law principles. The Parties hereby expressly opt-out of applicability of the Uniform Computer Information Transactions Act (UCITA).

**14.12 Force Majeure.** A party shall be excused from any delay or failure in performance of their obligations hereunder to the extent caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to, acts of God, earthquake, acts of terrorism, civil disorder, war, national or local emergency, acts of government, compliance with any statutory obligation or governmental requirements, fire, flood, or weather of exceptional severity ("Force Majeure Events"). Neither Party shall be liable for any loss or damage resulting from Force Majeure Event, provided that such Party uses all commercially reasonable efforts to avoid or remove such causes of nonperformance.

**14.13 Arbitration.** Any Dispute arising out of or relating to this MSA or a Order Form, or the breach thereof, will be settled by final and binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules and its Optional Procedures for Large, Complex Commercial Disputes. The arbitration will be heard and determined by a panel of three (3) arbitrators selected by the AAA, and each arbitrator will be an attorney having experience and familiarity with information

technology disputes. The arbitrators will have exclusive authority to resolve any and all disputes relating to procedural and substantive questions of arbitrability, including but not limited to, choice of venue and choice of law issues, and the formation, interpretation, applicability, scope, and enforceability of this agreement to arbitrate. Each Party will bear its own costs relating to such arbitration, and the Parties will equally share the arbitrators' fees. The arbitration and all related proceedings and discovery will take place pursuant to a protective order entered by the arbitrators that adequately protects the confidential nature of the Parties' proprietary and Confidential Information. In no event will any arbitration award provide a remedy beyond those permitted under this MSA or an Order Form, and any award providing a remedy beyond such will not be confirmed, no presumption of validity will attach, and such award will be vacated. Either Party may, without waiving any remedy under this MSA or a Order Form, seek from any court of competent jurisdiction with the State of New York any interim or provisional relief that such Party deems necessary to protect its Confidential Information pending the establishment of the arbitral tribunal or being the arbitral tribunal's determination of the merits of the claim.

14.14 Order of Precedence. In any conflict between the terms and conditions of the MSA and an Order Form, the Order Form shall control.

14.15 Construction. Each Party acknowledges that it has reviewed this MSA and any Order Form attached hereto. It is the Parties' intent that this MSA and any Order Form will not be construed against either Party and in the event of an ambiguity or question of intent or interpretation arises, shall be construed as if drafted jointly by the Parties with no presumption favoring or disfavoring any Party by virtue of authorship of any term.

14.16 Further Assurances. Each Party agrees that it shall execute and deliver such other documents and take such other actions as may be requested to effect the transactions contemplated hereunder or under a Order Form.

14.17 Entire Agreement. The MSA and any Order Form appended hereto constitutes the entire agreement between the Parties with respect to the subject matter in this MSA and the applicable Order Form, and supersedes all prior agreements, whether written or oral, with respect to the subject matter contained therein.