

## **Master Services Agreement**

This Master Services Agreement ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") between Managed Business Solutions, LLC, a Colorado limited liability company ("MBS") and Ventura County Employees' Retirement Association ("VCERA").

1. **Services.** VCERA retains MBS to perform consulting services that are described in a statement of work ("SOW") approved and executed by both MBS and VCERA (the "Services"). MBS will use reasonable efforts and abilities to perform the Services and to give VCERA the full benefit of MBS's knowledge, experience, judgment and expertise in performing the Services. The terms and conditions of this Agreement will govern all Services performed by MBS for VCERA.

2. **Statements of Work.** The SOW will include the following information: scope of work, proposed approach, deliverables, key assumptions, staffing and responsibilities of MBS and VCERA, estimated project schedule, and pricing and fees. The SOW will become effective only when signed by both MBS and VCERA. In the event that there is a material change to the SOW, MBS and VCERA shall prepare and sign a change order to address those changes. The process for preparing a change order shall be set forth in the SOW.

3. **Fees, Costs, Payment Terms.** VCERA shall pay MBS the amounts shown in the SOW. MBS will invoice VCERA for amounts that come due under the SOW. VCERA will not pay any fees in excess of the not-to-exceed amount on the SOW. Each invoice will detail MBS' activities in sufficient detail to allow the VCERA to track the hours and cost to the deliverables in the SOW. VCERA shall pay each invoice in full within 30 days of its receipt. MBS reserves the right to charge and collect a service fee on any unpaid, past-due amount equal to 1.5% for each month that an invoice is past due except in the cases in which VCERA has disputed the invoice for reasons of lack of performance or lack of quality of deliverables. VCERA shall reimburse MBS for its expenses incurred in performance of the Services that are approved in advance by VCERA and for which MBS provides a statement and evidence of the expenses. MBS's expenses may include out-of-town travel costs such as airline tickets, meals and hotels, subject to section 6.0 of the SOW.

### **4. General Obligations of MBS and VCERA.**

a. The SOW shall include a list of specific duties of VCERA and MBS. VCERA and MBS shall each perform their respective duties under the SOW in good faith and as promptly as needed in order to meet the estimated project schedule. VCERA will provide feedback and information to MBS as needed in order for MBS to perform the Services.

b. VCERA shall collect and deliver all background materials and information as reasonably required by MBS to perform the Services. VCERA shall provide MBS with timely access to all VCERA data and personnel knowledgeable about VCERA data as needed in order for MBS to perform the Services. MBS is responsible for clearly communicating in advance to VCERA all VCERA personnel and time requirements.

c. VCERA acknowledges and agrees that the accomplishment of the goals set forth in the SOW will require each party to fully cooperate with the other party, to fulfill its role and perform its obligations in a timely manner with personnel qualified to perform the tasks assigned and to coordinate its efforts with the efforts of the other party, and that all Services provided will be the result of the parties' joint input and efforts. MBS acknowledges that VCERA has a limited number of staff assigned to the project, and that MBS will be responsible for adapting its plan to accommodate for VCERA's operational responsibilities.

d. The Chairman of the Board of VCERA shall designate in writing a representative authorized to act on behalf of VCERA.

e. VCERA agrees that MBS is authorized to rely upon any instructions or information provided by VCERA the authorized representative or any persons designated by VCERA the authorized representative to provide instructions and information.

## 5. **Confidential Information.**

a. **Definition.** "Confidential Information" will mean any and all data pertaining to VCERA's members, any proprietary information of VCERA, technical data, trade secrets or know-how, including, but not limited to, research, product plans, products, services, customer and supplier lists and customers and suppliers, markets, software, developments, inventions, processes, formulae, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information disclosed to MBS by VCERA. Confidential Information also includes items prepared by MBS for VCERA in the performance of the Services that incorporates or creates any of the items listed above.

b. **Duty to Maintain Confidential Information.** MBS shall not, during or subsequent to the term of this Agreement: use the Confidential Information for any purpose whatsoever other than the performance of the Services on behalf of VCERA; or disclose the Confidential Information to any third party. Confidential Information will remain the sole property of VCERA. MBS agrees to take all reasonable precautions to prevent any unauthorized disclosure of the Confidential Information including, but not limited to, having each of its employees sign and deliver a confidentiality agreement. Confidential Information does not include information that: (i) is known to MBS on a non-confidential basis at the time of disclosure to or creation by MBS as evidenced by written records of MBS; (ii) has become publicly known and made generally available through no wrongful act of MBS; or (iii) has been rightfully received by MBS from a third party who is authorized to make such disclosure.

c. **Third Party Information.** MBS recognizes VCERA receives from third parties, including but not limited to, members and members' spouses, former spouses and beneficiaries their confidential or proprietary information subject to a duty on VCERA's part to maintain the confidentiality of such information and to use it only for certain limited purposes. MBS agrees that it owes VCERA and such third parties, during the term of this Agreement and thereafter, a duty to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person or entity or to use it except as necessary in carrying out the Services for VCERA consistent with VCERA's agreement with such third party.

d. ***Return of Confidential Information.*** Upon the termination of this Agreement, or upon VCERA's earlier request, MBS will deliver to VCERA all of VCERA's property or Confidential Information in tangible form that MBS may have in MBS's possession or control.

## 6. **Term and Termination.**

a. ***Effectiveness.*** This Agreement will take effect when signed by both VCERA and MBS. The effective date of the SOW shall be the date that it is signed, but no earlier than the date of this Agreement.

b. ***Termination.***

i. MBS or VCERA may terminate this Agreement at any time when there are no pending activities. In the event that there is a continuous 180-day period in which MBS has not performed Services for VCERA, then this Agreement shall terminate automatically.

ii. Either MBS or VCERA may terminate this Agreement and any existing activities for cause if the other party materially breaches this Agreement or any obligation under an existing SOW and fails to cure the breach within 10 business days of the non-breaching party's providing written notice of the breach.

iii. VCERA may terminate this Agreement and any existing activities for convenience by giving MBS at least 15 business days prior notice. In the event that VCERA exercises its rights under this subsection (iii), it will pay MBS: (A) all amounts due and payable to the date of termination; (B) all expenses incurred by MBS prior to the termination date (including non-refundable amounts paid for products and services not yet used); plus (C) the total amount earned by MBS on all open activities for work performed through the date of termination.

iv. The following sections of this Agreement will survive termination: Section 5 (Confidential Information); Section 7 (Limited Warranty); Section 8 (Limitation of Liability and Indemnity); Section 10 (Miscellaneous).

## 7. **Limited Warranty.**

a. MBS represents and warrants that deliverables provided to VCERA in MBS's performance of the Services will not infringe upon or constitute a misappropriation of any copyright, patent, trademark, trade secret, or other proprietary right of any third party.

b. MBS represents and warrants that the Services will: (i) be performed in a timely and professional manner and in accordance with the highest professional standards; and (ii) strictly comply with the descriptions and representations regarding the Services (including performance capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements) that are included in a SOW.

c. In the event that performance of the Services includes the selection of third-party software to be used by VCERA, VCERA will retain the right and responsibility to select the third party software. MBS makes no representation or warranty for third-party software.

d. To the maximum extent permitted by applicable law, MBS disclaims all other warranties, express or implied, including, but not limited to, warranties of merchantability and fitness for a particular purpose.

## **8. Limitation of Liability and Indemnity.**

a. ***MBS Indemnity.*** MBS will indemnify and hold VCERA harmless from all liability, claims, costs, damages and/or expenses (including legal fees) (collectively "Liabilities") resulting from either: (i) a breach of MBS's limited warranties that are expressly provided in this Agreement; or (ii) death, personal injury or illness resulting from MBS's providing the Services, to the extent to that such Liabilities are due to the negligence or willful act or omission of MBS.

### **b. *Limitations on Liability.***

i. ***No Special Damages.*** VCERA and MBS will not be liable to the other for any incidental, indirect, special, punitive or consequential loss or damage, including, but not limited to, any loss of business, revenue, profits, loss of or use of data, loss of savings or anticipated savings, loss of investment, loss of goodwill, loss of extra administrative cost, whether or not foreseeable.

ii. ***Absolute Cap.*** Except as to items covered by the insurance required in section 9, MBS's maximum liability under all possible theories and causes of action and for all types of damages will not exceed the total amount paid by VCERA under this Agreement for each statement of work. This absolute cap will not apply to a breach in warranty under 7b.

## **9. Insurance.**

a. MBS, at its sole cost and expense, will obtain and maintain in full force during the term of this Agreement the following types of insurance:

i. General Liability "occurrence" coverage in the minimum amount of \$1,000,000 combined single limit (CSL) bodily injury & property damage each occurrence and \$2,000,000 aggregate, including personal injury, broad form property damage, products/completed operations, broad form blanket contractual coverage.

ii. Commercial Automobile Liability coverage in the minimum amount of \$1,000,000 CSL bodily injury & property damage, including owned, non-owned, and hired automobiles. Also to include Uninsured/Underinsured Motorists coverage in the minimum amount of \$100,000 when there are owned vehicles.

iii. Workers' Compensation coverage, in full compliance with California statutory requirements, for all employees of MBS and Employer's Liability in the minimum amount of \$1,000,000.

iv. Professional Liability coverage in the minimum amount of \$1,000,000 each occurrence and \$5,000,000 aggregate.

b. All insurance required will be primary coverage as respects VCERA and any insurance or self-insurance maintained by VCERA will be excess of MBS's insurance coverage and will not contribute to it.

c. VCERA is to be notified immediately if any aggregate insurance limit is exceeded. Additional coverage must be purchased by MBS to meet requirements.

d. VCERA shall be named as Additional Insured under all insurance required under 9a hereof as respects to work done by MBS under the terms of this Agreement.

e. MBS agrees to waive all rights of subrogation against the VCERA, its Board, Agencies, Departments, Officers, Employees, Agents and Volunteers for losses arising from work performed by MBS under the terms of this Agreement.

f. Policies will not be canceled, non-renewed or reduced in scope of coverage until after sixty (60) days written notice has been given to the VCERA.

g. MBS agrees to provide VCERA with the following insurance documents on or before the effective date of this Agreement:

i. Certificates of Insurance for all required coverage.

ii. Additional Insured endorsement for all insurance required under 9a hereof.

iii. Waiver of Subrogation endorsement (a.k.a.: Waiver of Transfer Rights of Recovery Against Others, Waiver of MBS's Right to Recover from Others) for Workers' Compensation.

Failure to provide these documents will be grounds for immediate termination or suspension of this Agreement.

#### 10. **Miscellaneous.**

a. ***Governing Law, Jurisdiction and Venue.*** This Agreement will be governed in all respects under the laws of the State of California. The sole jurisdiction and venue for any legal action relating to this Agreement will be Ventura County, California. MBS and VCERA agree to submit to the personal jurisdiction of those courts.

b. **Entire Agreement; Amendment.** This Agreement and executed SOW is the full and entire understanding and agreement between MBS and VCERA with regard to the subjects discussed in this Agreement and the SOW. This Agreement may be amended or waived only by a written instrument signed by both parties. Any forbearance by a party to exercise a right of that party will not act as a waiver and the other party has no right to rely on any continued forbearance. In the event of a conflict between the terms of this Agreement and the terms in a SOW, the terms of this Agreement will govern.

c. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be enforceable against the party actually executing the counterpart, and all of which together will constitute one instrument. A signature sent by facsimile will be valid under this Agreement.

d. **Severability.** In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement will continue in full force and effect without that provision; provided that no severability will be effective if it materially changes the economic benefit of this Agreement to any party.

e. **Notices.** All notices required or permitted by this Agreement will be sent by first class mail or nationally recognized overnight courier to the address provided on the signature page to the attention of the individual signing this Agreement on behalf of the party.

g. **Assignment.** Except as specifically anticipated by this Agreement, neither party may assign its rights or delegate its duties under this Agreement. MBS may use independent contractors to perform the Services with the written consent of VCERA.

i. **Force Majeure.** Neither party will be liable for any delay under this Agreement if that delay is caused by circumstances beyond its reasonable control. Each party's performance will be suspended and excused during any period of such delay.

j. **Relationship of Parties.** MBS is an independent contractor of VCERA. Neither party is a partner, agent, representative, or employee of the other. MBS and VCERA are not joint venturers.

**MANAGED BUSINESS SOLUTIONS, LLC**

**Ventura County Employees' Retirement  
Association**



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