

Master Agreement - Terms and Conditions

This Master Agreement, consisting of the terms and conditions set forth below and in the attached Proposal incorporated into and made a part hereof by this reference (the “Agreement”) is made by and between Delphiis, Inc., dba Redspin, a division of CynergisTek, Inc. (“Redspin”), having its principal offices at 11940 Jollyville Road, Suite 300-N, Austin, TX 78759 and Redspin Services Client (“Client”) and shall be effective as of the last date of execution (the “Effective Date”) on the Proposal. Client desires to retain Redspin to render the services set forth in the Proposal. Redspin desires to accept such engagement, upon the terms and conditions set forth below:

BY ACCEPTING THESE TERMS AND CONDITIONS, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “CLIENT” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

Term.

This Agreement shall commence on the Effective Date and shall remain in full force and effect until performance by the parties is complete or until it is terminated in accordance with this section (the “Term”).

Termination for Cause: This Agreement may be terminated by either party for Cause (as hereinafter defined) effective upon delivery of written notice pursuant to this Agreement to the other party (the “Terminated Party”). “Cause” is defined to mean either (a) the commission of fraud, gross negligence or intentional misconduct by the Terminated Party, including, without limitations, the misappropriation or withholding of funds due and owing to either party hereunder, or (b) a material breach under this Agreement which is not cured for a period of thirty (30) calendar days after written notice thereof from the Non-Breaching party.

Termination Without Cause: Client may terminate this engagement at any time without cause upon ninety (90) days prior written notice to Redspin.

Redspin may terminate this engagement at any time without cause upon ninety (90) days prior written notice to Client.

Payments; Survival: Upon termination, Client will promptly pay any amounts due to Redspin, which amounts shall include fees and costs incurred up to and including the actual date of termination.

Duties of Redspin.

General Duties: Redspin shall provide services as described in the Redspin Scope of Work as ordered by Client (“Work”). The Work to be performed by Redspin is set forth in detail in the Proposal. The scope of the Work to be provided by Redspin may be expanded by Client upon the mutual agreement of the parties, and such additional services shall be billed to Client pursuant the current Redspin Standard Fee Schedule.

Location: Redspin will work out of its own facilities but shall be available to work at such Client facilities as may be necessary to provide the agreed services.

Methods of Performing Services: Redspin will determine the method, details, and means of performing the above-described services, except as specifically provided otherwise in this Agreement. Redspin will supply all tools and instrumentalities required to perform the services under this Agreement; provided, that Redspin will rely solely upon Client to supply the information and facts upon which Redspin will perform its services.

Compensation.

In full and complete consideration for Redspin’s Work under this Agreement, Client shall pay Redspin the following:

Compensation: Client shall pay Redspin as set forth in the Proposal or if mutually agreed, according to Redspin’s Standard Fee Schedule.

Payments: Payment shall be due and payable upon receipt of invoice. Amounts not paid within thirty (30) days of the invoice date are subject to a monthly finance charge equal to one and one-half percent (1.5%) or the maximum legal rate, whichever is greater, until paid in full.

Additional Services: Services performed by Redspin in addition to the Work specified herein shall be billed at the current Redspin Standard Fee Schedule, if mutually agreed upon in writing by both parties prior to performance of such services.

Expenses: In addition to the fees to be paid, Client further agrees to pay Redspin for reimbursable expenses associated with the relevant Proposal(s) as incurred, and invoices for reimbursable expenses are always due upon receipt. Reimbursable expenses are any reasonable expenses incurred in providing services under this Agreement, including, but not limited to, vendor management system registration(s), travel expenses, airfare and/or mileage, lodging, ground transportation, meals and incidental expenses (per diem based on published GSA guidelines), postage, messenger and mail expenses, long distance telephone charges, and other customary reimbursable expenses, subject to any modifications set forth in the executed Agreement.

Disputed Fees or Costs: In the event fees or costs submitted by Redspin are disputed, Client agrees to pay all undisputed amounts and to meet and confer with a representative of Redspin within ten (10) business days of the recognition of a dispute in order to deal in good faith in an attempt to resolve any disputed items. Any unpaid unresolved amounts shall be subject to a monthly finance charge equal to one and one-half percent

(1.5%) or the maximum legal rate, whichever is greater, until paid in full. If collection activity is required, Client agrees to pay all reasonable attorney's fees and costs associated with collection.

The Parties' Relationship.

Independent Contractor: Redspin shall for all purposes, be considered an independent contractor, and nothing in this Agreement shall be deemed to place the parties in the relationship of employer-employee, principal-agent, partners or joint ventures. Redspin may perform like services for clients other than Client during the Term of this Agreement.

Ownership: Redspin agrees that Client shall have exclusive, unlimited ownership rights to the Work; provided, however, that Redspin shall retain all right, title and ownership over each invention, technique, product, device or procedure over which Redspin has control, title and/or ownership and employs and/or embeds in the Work pursuant to rendering the services hereunder (the "Elements"); provided, further, that any third party applications, devices or products employed and/or embedded in the Work shall be subject to the licenses under which they have been obtained by Redspin and provided to Client. With respect to the Elements, Redspin hereby grants to Client a nonexclusive, irrevocable, perpetual license in and to the same as they are employed in the Work, and Client shall have full and free use of the Elements in the Work.

Delays: Any delay or nonperformance of any provision of this Agreement caused by conditions beyond the reasonable control of the parties shall not constitute a breach of this Agreement, provided that the delayed party has taken reasonable measures to timely notify the other of the delay in writing.

Redspin Employee Non-Solicitation. Client acknowledges that Redspin's employees and any independent contractors that it retains ("Employees") constitute a valuable asset of Redspin, and that its ability to perform its services hereunder and for other clients requires employee continuity. During the Term of this Agreement and for twelve (12) months after its termination, Client shall not independently employ or retain the services of any Redspin employee.

Warranties:

Redspin warrants that the Work will be free from errors for a period of thirty (30) calendar days after completion. For purposes of this Agreement, "errors" shall mean any deviations from commonly accepted standards that result in incorrect or misleading information or erroneous information, and similar deviations. Client's sole remedy for Redspin's failure to produce the Work or failure to deliver the Work shall be the right to terminate this Agreement as specified in the Terms section herein.

Redspin represents and warrants that it is not restricted or prohibited, contractually or otherwise, from entering into and performing this Agreement, and that its execution and performance of this Agreement is not a violation or breach of any other agreement between Redspin and any other person or entity.

Redspin represents and warrants to Client that (i) subject only to the rights granted herein to Client, Redspin is the sole owner of all rights to the Work, other than any material provided by Client, (ii) Redspin has not

previously granted any rights in the Work to any third party which are inconsistent with the rights granted to Client herein and (iii) the Work, other than any material provided by Client, will not infringe any trade secret or other intellectual property rights of any third party. Upon prompt and timely notice by Client of any allegation or claim arising out of the Work, Redspin will control defense of any action and have sole discretion whether to defend claims, obtain rights or make alternate arrangements.

THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE THE ONLY WARRANTIES GRANTED BY REDSPIN. REDSPIN DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PERFORMANCE OF WORK IS NO GUARANTEE THAT CLIENT'S SYSTEMS ARE SECURE. REDSPIN DOES NOT GUARANTEE OR WARRANTY THAT IT WILL FIND, LOCATE, OR DISCOVER ALL OF CLIENT'S SYSTEM OR OPERATION VULNERABILITIES AND CLIENT AGREES IT WILL NOT HOLD REDSPIN RESPONSIBLE OR LIABLE FOR THE SAME. IN NO EVENT SHALL REDSPIN'S AGGREGATE LIABILITY TO CLIENT FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION ARISING OUT OF A CLAIM FOR BREACH OF WARRANTY EXCEED THE AMOUNT REDSPIN HAS RECEIVED FROM CLIENT UNDER THIS AGREEMENT DURING THE 12 MONTHS PRIOR TO THE ALLEGED BREACH.

Confidentiality and Privacy of Client Information.

Use: Redspin and Client understand that Redspin may come into possession of proprietary and confidential information including nonpublic consumer financial information in connection with this engagement. Redspin's use of this information will be limited to the sole purpose of carrying out the Work under the terms of this engagement.

Disclosure: Redspin will retain any confidential information in the strictest confidence and will neither directly nor indirectly use it or disclose it to any person, firm or corporation without the written consent of the Client; and

Care: Redspin will exercise all due and diligent care and take all reasonable precautions to prevent any unauthorized disclosure or copying of confidential information.

General Provisions.

Indemnification: Client shall hold Redspin and its directors, officers, agents, and employees harmless from and agrees to pay, perform, indemnify, defend, and discharge each of them against any and all claims, obligations, or liabilities (including reasonable attorney's fees and costs) of whatever kind, character, or description that are brought by third parties arising out of or in connection with Redspin's performance of services under this Agreement, or any other work performed by Redspin at the request of Client or for Client's account by Redspin unless said claims, obligations, or liabilities are due to the sole negligence or willful misconduct of Redspin, its officers, agents, or employees.

Notices: Any notice to be given to Client under the terms of this Agreement shall be addressed to the addresses set forth above or to such other address as either party may hereafter designate in writing to the other. Any such notice shall be deemed to have been duly given when sent by overnight courier (such as

Federal Express) or enclosed in a properly sealed and addressed envelope, registered or certified, and deposited (postage or registry or certification fee prepaid) in a post office or branch post office regularly maintained by the United States government.

Entire Agreement/Modification: When signed by both parties, this Agreement (and the attached Proposal and Scope of Work) supersedes any and all other agreements or understandings, whether oral, implied or in writing, between the parties with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to such matters in their entirety. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. A conflict in these documents shall be resolved giving the terms of this Agreement priority and precedence over all others. Any modification of this Agreement will be effective only if it is in writing and signed by the parties hereof.

Governing Law: This Agreement shall be governed, interpreted, construed and enforced under the laws of the State of Texas without regard to principles of conflicts of law. The parties agree to personal jurisdiction of the federal and state courts for Travis County, Texas (USA) and that service of process may be made upon them at the address set forth above or any successor address in any manner permitted by the laws of the State of Texas (USA).

Severability: If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way. The invalid, ineffective and unenforceable provision shall, without further action by the parties, be automatically amended to affect the original purpose and intent of the invalid, ineffective or unenforceable provision; provided, however, that such amendment shall apply only with respect to the operation of such provision in the particular jurisdiction with respect to which such adjudication is made.

Collaboration: This Agreement is the product of collaboration among the parties, each of whom has been represented by counsel throughout the negotiations, drafting, and revision of this Agreement. No provision of this Agreement shall be construed against any party by virtue of the involvement of that party or his/her attorneys in drafting this Agreement.

Non-Waiver: No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right. The obligations of either party with respect to such right shall continue in full force and effect.

Counterparts: This Agreement may be executed by facsimile and in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Attorney's Fees: Before either party initiates a lawsuit against the other relating to a dispute or claim under this Agreement, the parties agree to work in good faith to resolve between them all disputes and claims arising out of or relating to this Agreement, the parties' performance under it, or its breach. During their discussions, each party will honor the other's reasonable requests for information that is not privileged and

that relates to the dispute or claim. This condition will not apply if the expiration of the statute of limitations for a cause of action is imminent. In the event of any suit, action, or arbitration is instituted to enforce or interpret the terms of this Agreement, the prevailing party in such suit or action, including any appeal therefrom, shall be entitled to recover from the other party its reasonable attorney's fees, including fees incurred in preparation for any such proceeding.