

Master Services Agreement

This Master Services Agreement (this "**Agreement**"), dated as of 11/5/21 (the "**Effective Date**"), is by and between Ocean Computer Group, Inc., a New Jersey corporation ("**OCG**") and BOROUGH OF SOUTH TOMS RIVER, a NEW JERSEY MUNICIPALITY. (the "**Customer**").

WHEREAS, Customer desires to retain OCG to provide certain information technology management services upon the terms and conditions hereinafter set forth, and OCG is willing to perform such services.

In consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

1. Services.

1.1 OCG shall provide certain services related to digital infrastructure management and security and other information technology services (the "**Services**") to Customer as described in more detail in one or more statement of work in accordance with the terms and conditions of this Agreement.

1.2 Each SOW shall include (a) a detailed description of the Services to be performed pursuant to the SOW, including, without limitation, an implementation plan and/or timetable for the implementation of such Services; (b) the fees to be paid to OCG under the SOW and a payment schedule, if applicable; and (c) any other terms and conditions agreed upon by the parties in connection with the Services to be performed pursuant to such SOW.

2. Customer's Obligations.

2.1 Customer shall:

(a) cooperate with OCG in all matters relating to the Services, including, without limitation, providing such information as OCG may reasonably request in order to carry out the Services, in a timely manner, and ensuring that it is complete and accurate in all material respects;

(b) ensure that all of Customer's equipment is in good working order and suitable for the purposes for which it is used in

relation to the Services and conforms to all relevant legal or industry standards or requirements;

(c) obtain and maintain all necessary licenses and consents and comply with all applicable law in relation to the Services; and

(d) if applicable, keep, maintain, and insure in good condition, and not dispose of or use any equipment, systems, cabling, or facilities provided by or on behalf of OCG and used directly or indirectly in the provision of the Services, other than in accordance with OCG's written instructions or authorization.

2.2 Customer shall be responsible for all servers and desktop software must be genuine, licensed, and vendor supported.

Unless otherwise specified in a SOW, the cost of bringing Customer's equipment into compliance with these standards shall be charged on a time and materials basis, pursuant to Section 5.2.

2.3 If OCG's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, OCG shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

3. Change Orders.

3.1 If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other party in writing. OCG shall, within a reasonable time after receiving a Customer-initiated request, or at the same time that OCG initiates such a request, provide a written estimate to Customer of: (a) the likely time required to implement the change; (b) any necessary variations to the fees and other charges for the Services arising from the change; (c) any other impact the change might have on the performance of this Agreement and/or the applicable SOW.

3.2 Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a "**Change Order**"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing.

4. Term and Termination.

4.1 Term. This Agreement shall commence as of the Effective Date and shall continue, unless sooner terminated pursuant to this Section 4.

4.2 Termination for Convenience. Either party, in its sole discretion, may terminate this Agreement or any SOW, in whole or in part, at any time without cause, by providing at least thirty (30) days' prior written notice to the other party.

4.3 Termination for Cause. Either party may terminate this Agreement or any SOW, effective upon written notice to the other party, if the defaulting party materially breaches this Agreement, and such breach is incapable of cure, or, with respect to a material breach capable of cure, the defaulting party does not cure such breach within fifteen (15) days after receipt of written notice of such breach.

4.4 Survival. Any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement to give effect to the intent of such right or obligation, shall survive any such termination or expiration of this Agreement.

5. Fees and Expenses; Payment Terms.

5.1 In consideration of the provision of the Services by OCG and the rights granted to Customer under this Agreement, Customer shall pay the fees set forth in the applicable SOW, and Customer shall reimburse expenses pursuant to this Section 5.

5.2 Where the Services are provided on a time and materials basis:

(a) the fees payable for the Services shall be calculated in accordance with OCG's then-applicable daily or hourly fee rates, which shall be provided upon request by Customer;

(b) Customer shall reimburse OCG for any materials, machinery, equipment, and third-party services reasonably necessary for the provision of the Services and not otherwise covered by an applicable SOW; and

(c) OCG shall issue invoices to Customer monthly for time and materials for the immediately preceding month, calculated as provided in this Section 5.2, together with a detailed breakdown of any expenses for such month incurred in accordance with Section 5.4.

5.3 Where Services are provided for a fixed price, the fees for the Services shall be the amount set out in the applicable SOW. If the fees are to be paid in installments, the SOW shall state the schedule for such installment payments.

5.4 Unless otherwise specified in a SOW, Customer agrees to reimburse OCG for all reasonable travel and out-of-pocket expenses incurred by OCG in connection with the performance of the Services.

5.5 Customer shall pay all properly invoiced amounts due to OCG within thirty (30) days after delivery of such invoice. All payments hereunder shall be in US dollars and made by check or wire transfer.

5.6 Customer shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by

any federal, state, or local governmental entity on any amounts payable by Customer hereunder.

6. Intellectual Property Rights; Ownership.

6.1 **“Intellectual Property Rights”**

means all (a) patents, patent disclosures, and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (d) trade secrets, know-how, and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

6.2 To the extent that any of the Deliverables do not constitute a “work made for hire,” OCG hereby irrevocably assigns to Customer all right, title, and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein.

6.3 OCG and its licensors are, and shall remain, the sole and exclusive owners of all right, title, and interest in and to all documents, data, know-how, methodologies, software, hardware, and other materials provided by or used by OCG in connection with performing the Services, in each case developed or acquired by OCG prior to the commencement of or independently of this Agreement. Use of any third-party software shall be subject to such third-party’s end user license agreement or other applicable terms and conditions.

6.4 **Services Operations Disclaimer.** Customer authorizes OCG to use its reasonable discretion to delete, change, and/or rewrite any of Customer’s digital data in furtherance of the performance of the Services, in accordance with industry standards.

7. Confidential Information.

7.1 Either party that receives Confidential Information (as defined in Section 7.2)

of the other party agrees not to disclose or otherwise make available such Confidential Information to any third party without the prior written consent of the disclosing party; *provided, however*, that the receiving party may disclose the Confidential Information to its officers, employees, consultants, and legal advisors who are themselves bound by nondisclosure obligations.

7.2 **“Confidential Information”**

means any information that is treated as confidential by a party, including but not limited to all non-public information about its business affairs, products or services, Intellectual Property Rights, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether disclosed orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential.” Confidential Information shall not include information that: (a) is already known to the receiving party without restriction on use or disclosure prior to receipt of such information from the disclosing party; (b) is or becomes generally known by the public other than by breach of this Agreement; or (c) is developed by the receiving party independently of any Confidential Information of the disclosing party.

8. Representations and Warranties.

8.1 Each party represents and warrants to the other party that: (a) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder; (b) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and (c) when executed and delivered by such party, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

8.2 Except for the express warranties in this agreement or in any applicable SOW, OCG hereby disclaims all warranties, either express, implied, statutory, or otherwise, including, without limitation, all implied warranties of merchantability,

fitness for a particular purpose, title, and non-infringement.

9. Indemnification. Customer shall defend, hold harmless, and indemnify OCG and OCG's affiliates and their respective officers, directors, employees, agents, successors, and permitted assigns from and against all Losses arising out of or resulting from: (a) bodily injury, death of any person, or damage to real or tangible, personal property resulting from the negligent or willful acts or omissions of Customer; and (b) Customer's material breach of any representation, warranty, or obligation of Customer set forth in this Agreement.

10. Limitation of Liability.

10.1 In no event will OCG be liable to customer or to any third party for any loss of use, revenue, profit, data, or equipment or for costs of substitute equipment, or for any consequential, incidental, indirect, exemplary, special, or punitive damages, whether arising out of breach of contract, tort (including negligence), or otherwise, regardless of whether such damage was foreseeable and whether or not such party has been advised of the possibility of such damages.

10.2 It is the responsibility of customer to ensure that all of its digital files and data are adequately duplicated, documented, or otherwise backed-up prior to OCG initiating any Services, and, in the event of data loss, Customer shall be solely responsible for the costs of reconstructing data lost during the course of providing the Services.

11. Non-Solicitation.

11.1 During the Term of this Agreement and any outstanding SOW and for a period of two (2) years thereafter, neither Customer nor OCG shall, directly or indirectly, in any manner, hire (whether as an employee or an independent contractor) solicit or induce for employment any person who is employed by or otherwise engaged as independent contractor for the other party, nor shall either party encourage any such person to leave the employ of the other party for any reason.

11.2 Customer acknowledges that OCG's employees and contractors are valuable assets of OCG, and OCG will be damaged by any breach of Section 11.1. If Customer breaches Section 11.1, Customer shall, on demand, pay to OCG, a sum equal to eighteen (18) months' basic salary or the annual fee that was payable by OCG to that employee, worker, or independent contractor, plus the recruitment costs incurred by OCG in replacing such person.

12. Force Majeure. OCG shall not be liable or responsible to Customer, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from the following force majeure events: (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency (including, without limitation, emergencies resulting from medical emergencies or widespread outbreaks of disease; (h) strikes, labor stoppages or slowdowns, or other industrial disturbances; (i) shortage of adequate power or transportation facilities; or (j) other events beyond the reasonable control of OCG.

13. Miscellaneous.

13.1 Each party shall, upon the reasonable request of the other party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

13.2 The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

13.3 All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given when actually delivered to the other party at the addresses listed below such party's signature hereto (or at such other address as shall be specified by a recipient party).

13.4 This Agreement, together with all Statements of Work, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any Statement of Work, this Agreement shall control.

13.5 Neither party may assign, transfer, or delegate any or all its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

13.6 This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other individual or entity any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

13.7 This Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or

delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

13.8 If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

13.9 This Agreement shall be governed by and construed in accordance with the internal laws of the State of New Jersey without giving effect to any choice or conflict of law provision or rule (whether of the State of New Jersey or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of New Jersey. Any legal suit, action, or proceeding arising out of or related to this Agreement or the Services provided hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of New Jersey in each case located in, or having jurisdiction over, the County of Monmouth, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

13.10 In any legal proceeding arising out of or relating to this agreement, each party irrevocably and unconditionally waives any right it may have to the adjudication of facts by a jury, and in any such court action, a judge or magistrate shall be the sole arbiter of fact of law.

13.11 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

OCEAN COMPUTER GROUP, INC.

By: _____

Name: _____

Title: _____

Address for Notices: 90 Matawan Road
Suite 105
Matawan, NJ 07747

E-mail for Notices: _____

BOROUGH OF SOUTH TOMS RIVER

By:  _____

Name: Joseph Kostede

Title: Administrator

Address for Notices: 17 Double Track Rd
South Toms River NJ 08757

E-mail for Notices: _____