**Master Services Agreement**

Between

**Proactive Risk Inc.
759 Bloomfield Ave., Suite 172
West Caldwell, New Jersey 07006**

And

CLIENT

Proactive Risk Inc., (hereafter referred to as "Company"), represents to

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
 (hereafter referred to as "Client"), that Company is in the business of providing program and project management related services, including consulting, training, and staffing. Company and Client may be referred to herein individually as a “Party” or together as the “Parties”.

RECITALS

Client desires to retain Company for project management-related training and consulting services, and Company wishes to provide such services, all subject to the terms and conditions of this Master Services Agreement (hereafter referred to as the “Agreement”), to Client.

 NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, receipt of which is hereby acknowledged, and further intending to be legally bound hereby, Client and Company hereby agree as follows:

**1.            Services to be Provided.**

During the Agreement Term (as defined herein), Company shall provide Project Management Services for Client as requested from time to time.  All work performed by Company for Client will be on a project basis.  For each project, Company will submit a written Statement of Work  (SOW) to Client outlining the services to be provided. The SOW shall also include the itemized estimated costs for performing such services in the form of a Work Order (“WO’) similar to the form attached hereto as Exhibit A, B and C (each WO shall be considered a separate SOW).  Upon execution by both parties, each WO shall be deemed to be incorporated into its associated SOW and this Agreement by reference. In the event of conflict between the terms of an SOW and this Agreement, the terms of the SOW (and associated WO) shall control. Company will undertake the performance of such services only upon full execution of a WO by Client and Company to carry out said services (the “Services”).

**2.           Term.**

The term of this Agreement shall begin on the Effective Date and shall continue for five (5) years and will automatically renew for another five (5) year term, unless (i) a Party provides notice to the other Party of its intent to terminate this agreement not less than thirty (30) days before the end of the then-current term, or unless terminated for cause by Company.

**3.            Compensation.**

As full and final compensation for Company's performance of the Services, Client shall pay Company’s fees, in accordance with the schedule and terms set forth in each WO.

**4.            Independent Contractor; Performance.**

                           (a)         Independent Contractor Status.  For purposes of this Agreement, any SOW, WO, and for all Services to be provided hereunder, Company shall not be considered a partner, co-venturer, agent, employee, or representative of Client, but shall remain in all respects an independent contractor.  Neither Party hereto undertakes or makes, nor shall have any right or authority to make or undertake any promise, warranty or representation, to execute any contract, or otherwise to assume any obligation or responsibility in the name of or on behalf of the other Party.  As an independent contractor, Company shall not participate in any employee benefits provided by Client to its employees, including worker's compensation insurance, disability, pension or other employee plans.  Company assumes full responsibility and liability for the payment of any taxes due on money received by Company hereunder.  In making payments to Company under this Agreement, Client will not make any deductions for taxes .

Manner of Performance by Company.  Company shall work closely with Client's personnel to the extent required and, if necessitated by the nature of the Services, Client will provide reasonable working accommodation, including space and access to Client's equipment as may be reasonably required to carry out the performance of the Services.  However, subject to the terms, conditions and provisions of this Agreement, Company shall be responsible for the manner in which Company performs the Services.  Company shall make available to Client periodically upon request, updates, status reports, other information as may be necessary in Company’s discretion, to enable Client to verify that Company is proceeding in accordance with any specified phase, completion dates and general specifications for each project, as specified in each WO.  While at the facilities of Client, Company shall observe and follow the work rules, policies and standards of Client including but not limited to Client's rules, policies and standards relating to security of and access to Client's facilities, telephone systems, electronic mail systems, computer systems, confidential information and intellectual property.

**5.           Confidentiality.**

(a)         Client Information.  Without Client’s prior written authorization, and except in connection with Company’ performance of the Services, Company agrees during the term of this Agreement and thereafter, to hold in strictest confidence, and not to use or disclose  any Confidential Information of Client.  As used herein, “Confidential Information” means any Client proprietary or confidential information, technical data, trade secrets or know-how, including, but not limited to, research, product plans, products, services, customer lists and customers, software, developments, inventions, processes, formulas, technology, designs, drawings, marketing plans, distribution and sales methods and systems, sales and profit figures, finances and other business information learned by or disclosed by the Client to Company in the course of providing the Services.

Notwithstanding the foregoing, where disclosure of Confidential Information is requested or sought from Company by judicial, regulatory, or other legal process, Company shall immediately give notice to Client. Client shall then timely notify Company of any legal action it takes prevent or limit such disclosure. In any event, Company shall disclose only that portion of the Confidential Information that, in the opinion of Client’s legal counsel, is legally required to be disclosed. It is Client’s responsibility to ensure that any such information so disclosed will be accorded confidential treatment by said court or tribunal.

(b)       Non-Confidential Information.  The parties hereby agree that the following shall not be considered Confidential Information subject to this Agreement:

(i)         information which prior to the time of disclosure by Client is in the public domain.

(ii)         information which, after disclosure by Client becomes part of the public domain by publication or otherwise, provided that such publication is not in violation of this Agreement or any other confidentiality agreement.

(iii)      information which Company can establish in writing was in Company' possession prior to the time of disclosure by Client and was not acquired, directly or indirectly, from Client.

(iv)           information which Company lawfully receives from a third Party provided, however, that such third Party was not obligated to hold such information in confidence.

(c)         Company-Restricted Information.  Company agrees that during the Term of this Agreement Company will not improperly use or disclose any proprietary or confidential information or trade secrets of any person or entity with whom Company has an agreement or duty to keep such information or secrets confidential.

(d)         Client Restricted Information.  Company represents to Client that Confidential Information will only be provided to Client’s employees, agents, consultants and officers that have a need to know such information to effectuate the purpose of this Agreement and that such employees, agents, consultants and officers shall be informed of this Confidentiality Agreement and shall agree to be bound by its terms.

(e)         Third-Party Information.  Company recognizes that Client has received and in the future may receive from confidential or proprietary information subject to a duty on Client's part to maintain the confidentiality of such information and to use it only for certain limited purposes (“Third Party Confidential Information”).  Subject to Section 5(a) above, Company agrees at all times during the term of this Agreement and thereafter, to hold in strictest confidence, and not to use or disclose to any person or entity Third Party Confidential Information, in a manner inconsistent with Client's agreement with such third Party.

**6.            Software Rights.**

Company hereby grants to Client a non-exclusive, non-sublicensable, limited, fully paid-up license to use, reproduce and modify any computer programs or code  (“Software”) provided to Client in the course of performing services described in the SOW. Client’s license to the Software is strictly for Client’s internal business use in accordance with the terms of this Agreement. Any and all developments to including, without limitation, all intellectual property rights in the developments are and shall remain the sole property of Company.  Any and all publications of any developments by Client must contain the applicable Company copyright notice. Client shall take all steps necessary to ensure that the developments are used only within the scope of the rights conveyed by this Agreement.  This paragraph does not apply to training materials or software documentation provided by Company, all rights to which are acknowledged by Client to belong to Company.  No portion of any training materials or software documentation provided by Company to Client may be reproduced or transmitted in any form or by any means, electronic or mechanical, for any purpose, without the express prior written consent of Company.

Company warrants that the services performed under this agreement will be performed using generally accepted industry standards and practices.

The warranty above is exclusive and is in lieu of all other warranties, express, implied, statutory or otherwise with respect to the services or products provided under this agreement, the performance of materials or processes developed or provided under this agreement, or as to the results which may be obtained therefrom, and all implied warranties of merchantability or fitness for a particular purpose.  Company shall not be liable for any services or products provided by a third Party, Client, developers or consultants identified or referred to Client by Company during any aspect of a project under this agreement, or otherwise.

Company’s liability to Client under this agreement and with respect to any services contemplated by this agreement shall be limited to damages directly attributable to defects in the services. Company shall not be liable for any damages caused by unauthorized modification of any computer programs or code provided pursuant to this agreement. Additionally, Company shall not be liable for any damages resulting from modifications by Client or any third Party of Client systems, data, computer programs, code or otherwise upon which Company originally provided such services.

In no event shall either Party be liable to the other Party for any incidental, consequential, indirect, or punitive damages (including but not limited to lost profits), regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranty if merchantability or fitness for a particular purpoe, failure of essential purpose or otherwise and even if advised of the possibility of such damages.

**7.            Copyrighted Training Materials and Software Documentation.**

Client hereby acknowledges Company’s rights, titles and interests of every kind and nature whatsoever in and to all training materials and software documentation, and all copies and versions thereof, including all copyrights therein and thereto and all renewals thereof, which have been prepared by Company.

**8.            Termination.**

a.         Mutual Agreement of Parties: Except as set forth in Section 8. (b), this Agreement may only be terminated by mutual written agreement of Client and Company.
Termination for Cause: If either Party is in material breach of this Agreement, the non-breaching Party may provide a written notice to the breaching Party specifying the nature of the breach. The breaching Party shall have thirty (30) days from receipt of such notice to cure such breach. If the breach is not cured within such period, the non-breaching Party may terminate this Agreement by providing the breaching Party with written notice of termination. Consent to extend the thirty (30) day cure period shall not be unreasonably withheld if the breaching Party has commenced cure efforts during such period and, in the Company’s opinion, pursues cure of the breach in good faith. Notwithstanding the foregoing, if Client is in breach of the payment terms of the “Invoice/Payment Schedule” section of the Project Statement of Work  and does not correct such breach within ten (10) days of notice from Company, Company may, at its option, terminate this Agreement or may suspend performance under this Agreement pending receipt of payment in full.
b.         Termination Without Cause: The parties hereby agree that the termination this Agreement (and any associated SOW) by Client without the consent of Company will result in a loss to Company that is not susceptible to a precise determination.  Prior to the end of the Term, and subject to this Section 8.(b), in the event that Client terminates this Agreement without cause, defaults in payment or otherwise breaches this Project Statement of Work, or cancels or suspends the Services of Company without the consent of Company, Company shall have the right and be entitled to (i) payment of the outstanding balance (i.e. Statements of Work-related Compensation less amounts paid by Client for Services) of all outstanding Project SOWs, together with past due amounts and (ii) immediately cease providing Services to Client.  The parties agree that payment all outstanding balances for Services performed by Company is not a penalty and is reasonable in light of the anticipated economic harm to the Company, lost opportunities by reason of commitments made to Client hereunder and the difficulty of finding appropriate placements for Company personnel who were committed to providing Services for Client.

**9.            No Conflicting Agreements.**

Company represents that Company is not a Party to any existing agreement which would prevent Company from entering into and performing this Agreement.  Company will not enter into any other agreement that is in direct conflict with Company’s obligations to Client under this Agreement.  Subject to the foregoing, Company may from time to time act as a consultant to, perform professional services for, or enter into agreements similar to this Agreement with other persons or entities without the necessity of obtaining approval from Client.

**10.         Return of Client Property.**

Promptly upon the expiration or termination of this Agreement, and earlier if requested by Client at any time, Company shall destroy or deliver to Client, at Client’s expense, all Confidential Information of  Client and all devices, records, data, notes reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, (including copies thereof) belonging to Client.  Company shall not remove any of Client’s property from Client’s premises without prior written authorization from Client.

**11.         Non-Solicitation of Employees.**

Company and Client agree that during the term of this Agreement and the twenty-four (24) month period commencing on the date that such term expires or is terminated, they shall not for any reason, either directly or indirectly, on each Party's own behalf or in the service of or on behalf of others, solicit, recruit or attempt to persuade any person to terminate such person’s employment with  Company or Client, as the case may be, whether or not such person is a full-time employee or whether or not such employment is pursuant to a written agreement or is at-will; provided that either Party may hire an employee of the other in the event such employee answers a general advertisement for employment.

**12.        Entire Agreement, Amendment and Assignment.**

This Agreement, all SOW’S and WO’s, together with attached Exhibits, comprise the entire agreement between Company and Client with respect to the Services to be performed hereunder and supersedes all prior and/or contemporaneous agreements and understandings, whether oral, written, or in any other medium, that might exist between the parties with relation to the subject matter hereof.  No modification to any provision of this Agreement and any SOW or WO shall be binding unless in writing and signed by both Company and Client.  No waiver of any rights under this Agreement will be effective unless in writing signed by the Party to be charged.  All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto, except that the duties and responsibilities of Company hereunder are of a personal nature and shall not be assignable or delegable in whole or in part by Company.

**13.        Governing Law, Jurisdiction and Venue.**

This Agreement shall be governed by and interpreted in accordance with laws of the State of New Jersey, County of Essex, without giving effect to any of its conflict of law’s provisions. Exclusive jurisdiction and venue for any action or proceeding that arises out of this Agreement shall lie exclusively within the state or federal courts nearest to Essex County, New Jersey.

14.        **Notices.**

All notices and other communications required or permitted hereunder or necessary or convenient in connection herewith shall be in writing and shall be deemed to have been given when hand delivered or mailed by registered or certified United States mail, as follows (provided that notice of change of address shall be deemed given only when received):

If to Client, to:

NAME:
ADDRESS:
CITY:                                    STATE:                                ZIP:
Email Address

If to Company, to:
                                                   Proactive Risk, Inc. c/o Legal
                                                   759 Bloomfield Ave #172
                                                   West Caldwell, New Jersey 07006

or to such other names or addresses as Client or Company, as the case may be, shall designate by notice to the person entitled to receive notices in the manner specified in this paragraph.

**15.        Insurance.**

During the term of this Agreement, Company shall obtain (a) worker’s compensation insurance coverage in such amounts as are required by the laws of the state(s) in which the Services are performed, (b) employer’s liability insurance coverage in an amount reasonably acceptable to Client, and (c) comprehensive general liability insurance coverage having an aggregate limit of not less than $l,000,000.  Thereafter, Company shall maintain such insurance coverage and bonding throughout the term of this Agreement and until the end of any warranty period under this Agreement that ends after the expiration or sooner termination of the term of this Agreement.  Each insurance policy shall be issued by responsible companies.

**16.        Force Majeure.**

Neither Party shall be liable or deemed to be in default for any delays due to causes beyond the reasonable control of the Party such as war, civil disorders, pandemic shortages of raw material or energy or other conservation matters, acts of God, or governmental action, (including regulatory restrictions or actions or regulatory agencies) provided that the affected Party promptly notifies the other of the causes and its effects on the Services to be performed hereunder.

**17.        Counterparts.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, but all of which together shall constitute but one and the same instrument.

**18.        Severability.**

If any provision of this Agreement or application thereof to anyone or under any circumstances is adjudicated to be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect any other provision or application of this Agreement which can be given effect without the invalid or unenforceable provision or application and shall not invalidate or render unenforceable such provision or application in any other jurisdiction.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have duly executed this Agreement as of the                                            (“Effective Date”).

ACKNOWLEDGED, ACCEPTED AND AGREED TO:

CLIENT:
NAME:
TITLE:
SIGNATURE:
DATE:

Proactive Risk Inc.
NAME:
TITLE:
SIGNATURE:
DATE:

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**EXHIBIT A - Consulting Services**

STATEMENT OF WORK  No. 1234567

This Project Statement of Work  (SOW) dated \_\_\_\_ day of \_\_\_\_\_\_ \_\_\_\_, 202\_\_ is subject to the terms of the Master Services Agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_, (the “Agreement”) between and Proactive Risk, Inc. (“Company”) and <CLIENT NAME>, (“Client”).  Pursuant to the Agreement, Proactive Risk has agreed to perform certain services in accordance with written WOs such as this one, entered into from time to time describing such services.

The parties hereby agree as follows:

1.           Services to be Provided: Company will render such services as may be necessary to complete in a professional manner the project described below, and made a part hereof in its entirety as amended from time to time

DESCRIPTION OF SERVICES:
Task 1: Description…
Task 2: Description…
Task 3: Description…

2.           Company’s Main Contact Within Client: The individual set forth below in this paragraph shall be Company’s prime contact within Client with regards to Company’s Services hereunder and shall be responsible for approving Company’s scope of work under this WO:

Name:
Title:

3.           Fee Rate and Payment Schedule:   Client shall pay the following rate for Company’s Services:

              Hourly: \_\_\_\_\_ or Fixed Cost: \_\_\_\_\_\_

              Total estimated cost: \_\_\_\_\_\_\_

In addition, Client shall reimburse Company for out-of-pocket travel, hotel and meal expenses reasonably incurred by Company provided that any travel is approved in advance by Client and the expenses are incurred in accordance with Client’s reimbursement policies.

Invoices shall be provided to Client on a weekly basis.  Client shall pay Company within thirty (30) days of receipt of invoice.

ACKNOWLEDGED, ACCEPTED AND AGREED TO:

CLIENT:
NAME:
TITLE:
SIGNATURE:
DATE:

Proactive Risk Inc.
NAME:
TITLE:
SIGNATURE:
DATE:

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**EXHIBIT B – Hourly Staffing with Rights & Terms for Conversion to Direct Hire**

STATEMENT OF WORK  No.\_\_\_\_

This Project Statement of Work  (SOW) dated \_\_\_\_ day of \_\_\_\_\_\_\_ 202\_\_\_ is subject to the terms of the Master Services Agreement dated this \_\_\_ day of \_\_\_\_\_\_\_, 202\_\_\_\_, (the “Agreement”) between and Proactive Risk, Inc. (“Company”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Client”).  Pursuant to the Agreement, Company has agreed to perform certain services in accordance with written WOs such as this one, entered into from time to time describing such services

The parties hereby agree as follows:

Services to be Provided: Company will render such services as may be necessary to complete in a professional manner the project described below, and made a part hereof in its entirety as amended from time to time

Project Scope: Company will provide temporary staff augmentation services.

Consultant Name

Consultant Standard hourly rate $

Consultant Overtime hourly rate $

Work Location
Client will be responsible for all out-of-pocket travel, hotel and meal expenses outside of this location.

Period of Performance (start & finish dates)

Primary responsibilities

Compensation: For performance of these Services, Client shall pay to Company\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dollars (US $\_\_\_\_.00) per hour for up to a total of \_\_\_\_\_\_\_\_\_\_\_ estimated consulting hours during the term of this Statement of Work .

In addition, Client shall reimburse Company for out-of-pocket travel, hotel and meal expenses reasonably incurred by Company provided that any travel outside assigned location is approved in advance by Client and the expenses are incurred in accordance with Client’s reimbursement policies.

Invoices shall be provided to Client on a weekly basis.  Client shall pay Company within thirty (30) days of receipt of invoice.

Right to Hire Conversion Fee Table.  Client shall have a limited right to hire Company’s consultants’ contingent upon the terms below and payment of the conversion fees as outlined below:

Conversion Fee will be based on the completion of billable hours as indicated here:
Fee for Right to Hire\*

0 - 520 billable hours
20 %

521 - 1040 billable hours
15 %

1041 - 1560 billable hours
10 %

1561 - 2080 billable hours
5 %

> 2080 billable hours
0%

Client Conditions for Right to Hire: Client agrees to provide written notice to Company fifteen (15) days prior of Client’s intent to extend offer of employment to Company’s consultant. The purpose of this clause is to ensure the Company and Client have the opportunity to communicate and clarify the appropriate steps to convert the Company’s consultant to Client’s employee. The Right to Hire Conversion Fee is due and payable on the Company’s consultant’s start date.

Client also agrees to provide a copy of the consultant’s job offer to Company that verifies the consultant’s first year salary and to ensure the accuracy of the related Right to Hire fee to be paid to Company.

In the event of a violation of the terms of this paragraph, Client agrees to forfeit the Right to Hire the Company’s consultants.

Survivability: The Right to Hire Conversion Fee Table and Conditions of Right to Hire above shall survive any termination of the current active MSA between Company and Client and/or this Statement of Work for a period of one (1) year from the date of termination.

In the case of the termination of the current MSA and/or this SOW, Client forfeits all right to hire Company’s consultants.

Company’s Main Contact Within Client: The individual set forth below in this paragraph shall be Company’s prime contact within Client with regards to Company’s Services hereunder and shall be responsible for approving Company’s scope of work under this WO:

Name:
Title:

ACKNOWLEDGED, ACCEPTED AND AGREED TO:

CLIENT:
NAME:
TITLE:
SIGNATURE:

Proactive Risk Inc.
NAME:
TITLE:
SIGNATURE:

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**EXHIBIT C – Direct Full-time Placement**

STATEMENT OF WORK  No.\_\_\_\_

This Project Statement of Work  (SOW) dated \_\_\_\_ day of \_\_\_\_\_\_ \_\_\_\_, 2\_\_\_ is subject to the terms of the Master Services Agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_, (the “Agreement”) between and Proactive Risk, Inc. (“Company”) and <CLIENT NAME>, (“Client”).  Pursuant to the Agreement, Proactive Risk has agreed to perform certain services in accordance with written WOs such as this one, entered into from time to time describing such services

The parties hereby agree as follows:

COMPENSATION

CLIENT shall pay to COMPANY a fee of twenty-five percent (25%) of the agreed upon annual salary for the permanent position.  COMPANY will invoice CLIENT upon candidate’s starting day of employment with CLIENT.
The fee is due and payable within fifteen (15) days of the candidate’s start date to activate replacement policy.

REPLACEMENT POLICY

If our candidate resigns or is terminated for valid cause during their first ninety (90) days of employment, COMPANY will first be given the opportunity to source a replacement candidate for the same position in the next sixty (60) days.  If COMPANY is unable to find a suitable replacement, we will then provide the CLIENT a pro-rated credit of the fee towards the next position to be filled or a pro-rated refund based on the following schedule: 0-30 days = 100% fee refund; 31-60 = 50% fee refund; 61-90 days = 25% fee refund.
This replacement policy is valid only if the fee is received within fifteen (15) days from candidate’s start date per the terms under COMPENSATION and if written notification and request for a replacement is received within five (5) calendar days from the date that the candidate’s services cease. This policy is only valid as long as the position description, compensation and reporting manager remain the same. This replacement policy would not apply if the candidate is terminated due to a company layoff, company reorganization, company closure or relocation.

SOLICITATION OF EMPLOYEES

Company and Client agree that during the term of this Agreement and the twelve (12) month period commencing on the date that such term expires or is terminated, they shall not for any reason, either directly or indirectly, on each Party's own behalf or in the service of or on behalf of others, solicit, recruit or attempt to persuade any person to terminate such person’s employment with  Company or Client, as the case may be, whether or not such person is a full-time employee or whether or not such employment is pursuant to a written agreement or is at-will; provided that either Party may hire an employee of the other in the event such employee answers a general advertisement for employment.

SURVIVABILITY

The Compensation Fee of twenty-five percent (25%) above shall survive any expiration and/or termination of the current active MSA between Company and Client and/or this Statement of Work for a period of one (1) year from the date of expiration and/or termination.

In the case of the expiration and/or termination of the current MSA and/or this SOW, Client agrees to pay the Compensation Fee of twenty-five percent (25%) if the Client hires any of the Company’s candidates that were presented to Client within a period of one (1) year from the date of expiration and/or termination.

ACKNOWLEDGED, ACCEPTED AND AGREED TO:

CLIENT:
NAME:
TITLE:
SIGNATURE:
DATE:

Proactive Risk Inc.
NAME:
TITLE:
SIGNATURE:
DATE: