

RESOLUTION NO. 2022-27

A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ENTER INTO AN AGREEMENT WITH VERDANTAS FOR THE USEPA BROWNFIELD (HAZARDOUS) ASSESSMENT GRANT PENDING FINAL LEGAL APPROVAL.

WHEREAS, in 2022, the Lorain Port Authority was awarded a \$500,000.00 Grant from USEPA Brownfield, to complete environmental assessments of hazardous related sites in the Community; and

WHEREAS, as the Lorain Port Authority has selected the firm of Verdantas to perform said work tasks.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Lorain Port Authority:

SECTION I. That the Executive Director or his designee is hereby authorized to enter into a Contract Verdantas to complete environmental assessments (hazardous) on behalf of the Lorain Port Authority as outlined in the USEPA Agreement.

SECTION II. That the total Contract award for the Brownfield Assessment (hazardous) aspect of the Brownfield Grant shall not exceed \$493,000.00.

SECTION III. It is found and determined that all formal proceedings and actions of this Board concerning and relating to the passage of this resolution were adopted in an open meeting of this Board, and that all deliberations of this Board and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal Requirements, including Section 121.22, of the Ohio Revised Code.

Ayes: 6

Nays: 0

Abstain: 1

Adopted: 11/08/2022


Brad Mullins, Chairman


Tom Brown, Executive Director

CONTRACT # _____

**MASTER SERVICES AGREEMENT
FOR
PROFESSIONAL CONSULTING SERVICES**

Consultant: Verdantas LLC

Client: _____

WITNESSETH THAT:

WHEREAS, _____, hereafter referred to as the Client, wishes to retain Verdantas LLC, hereafter referred to as the "Consultant" or "Verdantas", to provide professional services as an independent contractor, and as outlined in Section 2 of this Master Services Agreement for Professional Consulting Services (Agreement); and

WHEREAS, Client and Consultant, collectively the Parties, desire to establish terms and conditions which shall apply to and become part of every task order, work order, purchase order or other agreement concerning professional services to be performed by Consultant on Client's behalf;

NOW, THEREFORE, in consideration of the mutual promises, conditions and agreements herein contained, the sufficiency of which is hereby acknowledged, the Parties hereto mutually agree as follows:

1. **Definitions.** As used in these General Terms and Conditions (the "Terms"), the following definitions apply:
 - 1.1. "Claims" means any and all liabilities, claims, suits, losses, damages, fines, penalties and costs, including reasonable attorney's fees and other legal fees and related legal expenses;
 - 1.2. "Client" means the party that has entered into the Contract with Verdantas LLC;
 - 1.3. "Consultant" means Verdantas LLC, or its employees, officers, agents, representatives, subconsultants and subcontractors;
 - 1.4. "Contract" means the Proposal and these Terms, as either may be modified or supplemented in writing in accordance with Sections 2, 20.5, or 22;
 - 1.5. "Verdantas" means the Verdantas LLC company providing the Services on Client's behalf;
 - 1.6. "Party" means either Verdantas or Client, as indicated by the context, Parties means both Verdantas and Client;

- 1.7. "Proposal" means the document(s) issued by Verdantas, that reference, incorporate by reference, and are accompanied by these Terms, in which Verdantas describes and offers to perform Services for Client;
 - 1.8. "Services" or "Scope of Services" means the work performed or to be performed by Verdantas pursuant to the Proposal, and includes all Verdantas work product; and
 - 1.9. "Site" means any site upon which or in relation to which Services may be performed.
- 2. Proposal.** Consultant shall prepare a Scope of Work and cost estimate (Proposal) for each project governed by this Master Services Agreement. A Task Order form (Attachment A) shall be completed for each project, which references the Proposal and this Agreement, and shall be signed by the Client to acknowledge acceptance prior to proceeding with the project. The Scope of Work for specific projects may be amended as agreed upon by the Client and Consultant, in which case a new Task Order form defining the scope and cost of additional work shall be completed and signed by the Client. The Proposal can be accepted by Client within 30 days of its issuance. Depending on the Services to be offered, the Proposal may contain supplementary terms that modify the terms and conditions set forth in this Master Services Agreement, and the Contract entered into between Client and Verdantas. In the event of any discrepancy or inconsistency between the terms and conditions set forth in this Master Services Agreement and the terms set forth in the Proposal, the terms contained in the Proposal control. Unless expressly stated otherwise in the Proposal, the fees, costs and schedules in the Proposal constitute Verdantas' estimated probable cost and estimated schedule for the Services. The estimated probable cost is not a guaranteed maximum or not-to-exceed price. Verdantas shall inform Client if it determines at any time that a material change to the nature, time or extent of Services is required or advisable. No material change will be made without Client's consent except pursuant to Section 3, below.
- 3. Force Majeure; Emergencies; Discovery of Unanticipated Hazardous Substances; Subsurface and General Risks.**
- 3.1. Verdantas' fees, costs, and schedule are subject to equitable adjustments for delays caused by Client's failure to provide any required approvals, or suitable Site access, or by occurrences or circumstances beyond Verdantas' reasonable control, such as fires, floods, earthquakes, strikes, riots, war, terrorism, threat of terrorism, acts of God, acts or regulations of a governmental agency, emergency, security measure or other circumstances, including, without limitation, unusual weather conditions ("Force Majeure"). If Verdantas determines in its sole discretion, based on circumstances surrounding the Services, that the health or safety of its personnel or its subcontractors' personnel is or may be at risk in performing Services, such circumstances will constitute a Force Majeure, and Verdantas will have the right to cease provision of Services until the situation has been properly addressed by the Client or take any measure it deems necessary to protect its personnel.
 - 3.2. Hazardous substances may exist at a site where there is no reason to believe that they are present. Verdantas and Client agree that the discovery of unanticipated hazardous substances constitutes a changed condition and may require a renegotiation of the Scope of Services, an adjustment of the proposed fee for the Services, or termination of the Services. Verdantas agrees to notify client as soon as practicable should unanticipated hazardous substances, or unanticipated suspected hazardous substances, be encountered. Client agrees that Verdantas may take such measures as, in Verdantas' professional opinion, are necessary and prudent to preserve and protect the health and safety of Verdantas' personnel, equipment, and members of the public, including Containment of the hazardous substances as set forth more fully in Section 10, below, and Client agrees to compensate Verdantas for the additional cost of such protective measures. In addition, client waives any claim against Verdantas and agrees that Verdantas shall not be responsible for any claim or liability for injury or loss arising from Verdantas' discovery of, or responses to, unanticipated hazardous substances.
 - 3.3. In the event that samples or materials are collected as part of the Services, and the samples or materials contain or are suspected to contain substances that are hazardous substances or hazardous waste as defined by federal, state, or local statutes, regulations, ordinances or related requirements, Verdantas will, after completion of testing, (1) return such samples and materials to the Client, or (2) using a hazardous waste or hazardous materials manifest signed by Client as generator, have such samples and materials transported to a location selected by Client for final disposal. Client agrees to pay the costs associated with the storage, transport, and disposal of samples and materials. Client hereby assumes all potential liability as generator of the waste, including liability under CERCLA for arranging for the disposal of the hazardous substances.
 - 3.4. In accordance with individual states' general laws and regulations (collectively "State Programs"), the performance of the Services under the Contract may require Verdantas to act as a state-certified or registered professional with certain professional obligations owed to the public, including, in some instances, an independent duty to report to the state the existence of certain environmental conditions, discharges or threats of releases, which Verdantas is required by law to report, or in its professional judgment pose an imminent threat to public health or the environment ("Immediate Threat"). Verdantas will report any such Immediate Threats it discovers and its assessment of the significance of the Immediate Threat to the Client so that the Client can report to the proper regulatory authorities. If the Client fails to report an Immediate Threat to the proper authorities as required by law, and Verdantas reasonably believes that it has an independent legal or ethical responsibility to do so, Verdantas shall so inform the Client, citing the regulatory or ethical requirement in writing. If the Client continues to fail to report the Immediate Threat, Verdantas may disclose and report to the authorities and shall have no liability to the Client for making any such disclosures or reports. In the event

Verdantas' obligations under the State Programs conflict with the interests of the Client, the Client accepts that Verdantas is bound by law to comply with the requirements of the State Programs. The Client recognizes and agrees that Verdantas shall be immune from all civil liability resulting from any alleged conflict between the interests of the Client and the reporting requirements placed upon Verdantas pursuant to the State Programs. The obligations of this paragraph shall extend also to any federal reporting obligations imposed upon Verdantas in connection with the Services rendered to Client.

- 3.5. Client recognizes that special risks occur and "guarantees" cannot be expected whenever Professional Consulting Services are applied to determine the composition of a site's subsurface including the existence or non-existence of hazardous or regulated substances in soils, structures or other media. Verdantas cannot eliminate these risks and cannot guarantee any particular result. Client acknowledges that an increased scope of investigation may reduce, but not eliminate risk. The passage of time also affects the information presented in the report. Verdantas' opinion is affected by the limited scope of work and the information and observed site conditions that existed at the time our conclusions were formulated. The only way to know about the actual composition and condition of a site's conditions is through complete excavation or exposure of the materials, including testing and analysis which is not typically practical and frequently cost prohibitive.

4. Labor Rates.

- 4.1. For Services charged on a time-and-material or cost-reimbursable basis, labor, costs and expenses will be billed to Client as indicated in the Proposal, or on the rate schedules attached to the Terms. Verdantas labor rates apply to (i) full-time, part-time, temporary and seconded employees of Verdantas and its affiliates, (ii) temporary employees whose direct compensation is paid by a temporary staffing agency and (iii) staff consultants.
- 4.2. Labor rates stated in the Proposal, or in attached rate schedules, are subject to periodic adjustment by Verdantas. Labor rates will remain unchanged during the first two years of the contract and will be subject to escalation in the third year of the contract. If labor rates are not stated in the Proposal, Verdantas' standard labor rates in effect at the time the Services are performed shall apply.
- 4.3. If Services covered by the Proposal are subject to taxes or fees (except income taxes), such costs will be charged to and reimbursed by Client. A handling and administrative charge of 10% will be added to all third-party expenses.

5. Invoices and Payment.

- 5.1. Charges for the Services performed shall be invoiced monthly, or as otherwise set forth in the Scope of Services. Unless otherwise provided by the Scope of Services, invoices will be payable within thirty (30) days of receipt by the Client. If the Client objects to all, or any portion, of an invoice, the Client shall notify Verdantas in writing within seven (7) business days from the date of receipt of the invoice, and shall state the reasons for the objection, and timely pay the portion of the invoice that is not in dispute. The parties shall immediately work together in good faith to settle the disputed portion of any invoice, and if any billing and payment dispute cannot be resolved within thirty (30) days of Verdantas' receipt of written notice thereof, Verdantas may pursue all legal and equitable remedies under applicable law in a court of competent jurisdiction.
- 5.2. Amounts not paid within the time periods set forth in the Scope of Services shall be deemed delinquent and will accrue interest at a rate of one and one-half percent (1.5%) per month, or the maximum amount allowed by applicable law, whichever is less. Late payments shall be first applied to accrued interest and then to unpaid principal. Interest charges will not apply to any disputed portion of an invoice, to the extent the dispute is resolved in favor of the Client.

6. Termination.

- 6.1. Either Party may terminate the Contract for cause by written notice to the other Party (i) upon breach by the other Party of a material obligation under the Contract, (ii) if the other Party goes into bankruptcy, is liquidated or is otherwise unable to pay its debts as they become due or (iii) if the other Party resolves to appoint or has appointed for it an administrator, receiver or other similar officer for any part of the Party's business, property or assets. If the Contract is terminated by either Party for cause, Verdantas shall cease provision of Services. Any termination for cause will be effective only if the terminated Party is given (a) at least 10 calendar days' written notice of termination, (b) opportunity for consultation with the terminating Party before the termination date if breach is claimed, and (c) reasonable opportunity to cure the breach to the extent it can be cured. The foregoing notwithstanding, Verdantas may terminate the Contract if Client fails to pay any invoice within 60 days of its due date, Verdantas may terminate the Contract and stop performance of the Services immediately upon notice to Client of its non-payment.
- 6.2. Client may terminate the Contract for its convenience upon five (5) business days' written notice to Verdantas, in which event Client shall pay all fees and expenses for Services accrued as of the termination date, and Verdantas' reasonable costs resulting from

termination, including, without limitation, demobilization costs, as detailed in a final invoice. This section does not limit Verdantas' rights to seek recovery for Claims resulting from a breach by Client.

7. Insurance.

7.1. During the term of this Agreement, Verdantas shall, at its own expense, maintain and carry the insurance as set forth below. Verdantas will furnish certificates of such insurance or policy declaration pages upon request.

TYPE	LIMITS
Worker's Compensation	Statutory Limit
Employer's Liability Bodily Injury by Accident Bodily Injury by Disease Bodily Injury by Disease	\$1,000,000 \$1,000,000 Each Employee \$1,000,000 Policy Limit
Commercial General Liability including Contractual Liability, Broad Form Property Damage, and Completed Operations	\$1,000,000 (Combined Single Limit) \$2,000,000 (General Aggregate)
Automobile Liability , including Bodily Injury/Property for Owned, Hired, and Non-Owned Vehicles	\$1,000,000 (Combined Single Limit)
Professional Liability (Errors and Omissions) Per Claim Aggregate	\$1,000,000 \$2,000,000
Excess Liability (Umbrella Form)	\$5,000,000

7.2 Upon written agreement of the Parties, Verdantas may procure and maintain additional insurance coverage or increased policy limits at Client's expense. Client acknowledges that this option for higher insurance limits have been explained to Client.

8. Indemnification.

8.1. Verdantas shall indemnify Client, its affiliates and their respective directors, officers and employees (individually, a "Client Indemnitee" and collectively, "Client Indemnitees") from and against Claims arising out of the Contract, to the extent Claims are caused by the negligence, breach of contract, or willful misconduct of Verdantas. The foregoing does not include Client's attorney's fees or other legal fees based on breach of Section 9.1.

8.2. Client agrees that Verdantas, its affiliates and their respective directors, officers, employees and contractors (collectively, "Verdantas") shall not be liable for Claims arising out of the Contract, to the extent such Claims are caused by the negligence, breach of contract, or willful misconduct of Client.

8.3. Verdantas shall not be liable to a Client Indemnitee or any third party for the creation, existence or release of any type of hazardous or toxic waste, material, chemical, compound or substance, or any other type of environmental hazard, contamination or pollution, whether latent or patent, or the violation of any law or regulation relating thereto, existing at a Site prior to commencement of the Services ("Pre-Existing Condition"), and Client agrees that Verdantas shall have no liability for Claims sustained in connection with a Pre-Existing Condition except to the extent the Pre-Existing Condition is exacerbated by the negligence or willful misconduct of an Verdantas Indemnitee.

9. Standard of Care; Limitation of Liability.

9.1. Verdantas shall exercise the degree of care and skill ordinarily exercised under similar circumstances at the same time by experienced professionals performing substantially similar services at the same or similar locality as the Site. Verdantas makes no

representations and provided no warranties or guarantees other than those expressly set forth in herein. Any implied representations, warranties, or guarantees are expressly disclaimed.

- 9.2. Verdantas may furnish opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs (collectively, "Opinions of Probable Cost"). Opinions of Probable Cost prepared by Verdantas hereunder will be made on the basis of Verdantas' experience and qualifications and will represent Verdantas' judgment as an experienced and qualified design professional. Verdantas does not represent, warrant, or guarantee the accuracy of such estimates and shall not be liable should actual costs differ from issued Opinions of Probable Cost.
- 9.3. In no event shall a client indemnitee be liable to Verdantas, or Verdantas be liable to a Client indemnitee, or anyone claiming to be by, through, or under a Client indemnitee, or Verdantas, including without limitation, insurers, for any lost, delayed, or diminished profits, revenues, business opportunities or production or for any incidental, collateral, special, indirect, punitive, exemplary, financial, consequential, or economic losses or damages of any kind or nature whatsoever, however caused regardless of whether the Client indemnitee or Verdantas, as applicable, knew or should have known of the possibility of such losses or damages.
- 9.4. In no event will Verdantas be liable to a Client indemnitee or anyone claiming by, through or under it, including without limitation, insurers, for any amount in excess of two hundred fifty thousand dollars (\$250,000) in the aggregate. To the maximum amount permitted by law, Verdantas shall have no liability if Client fails to initiate legal proceedings within twelve (12) months of the performance of the Services. Client releases Verdantas from any damages sustained by Client in excess of the amount stated in this Section 9.4, and to the maximum extent permitted by law, from any claim that it is the subject of proceedings not initiated within the time period specified in this Section 9.4.
- 9.5. The provisions of this Section 9 will (i) apply to the fullest extent allowed by law whether liability is claimed or found to be based in contract (including breach of warranty or contract), tort (including negligence or negligent misrepresentation), equity, strict liability or otherwise, and (ii) survive the completion of Services and the expiration, cancellation or termination of the Contract. The provisions of Sections 9.3 and 9.4 shall be enforceable independently, if necessary.
- 9.6. Client acknowledges and agrees that the price for Services set forth in the Proposal, subject to adjustment pursuant to the Contract, has been negotiated in consideration of the Parties' agreement to allocate contractual liability amongst themselves. Accordingly, Client acknowledges and agrees that the provisions of this Section 9 satisfy any requirement of reasonableness under any law applicable to the Contract, and to any Claims relating to, or arising in connection with, the Contract.
- 10. Containment and Disposal.** If any hazardous or toxic waste, material, chemical, compound or substance or any waste regulated by local, state, provincial or federal law ("Waste") are encountered by Verdantas, Verdantas shall have the option, but not the obligation, to appropriately containerize the Waste and either (i) leave the containerized Waste on Site for proper disposal by Client or (ii) using a manifest signed by Client as generator, assist with transportation of Waste to a location selected by Client for disposal. Client acknowledges that at no time does Verdantas assume authority over the transportation or disposal of, or title to, or the risk of loss associated with, the Waste. Client agrees that Verdantas shall have no liability for any and all Claims (including, without limitation, any liability derived from any local, state, provincial or federal "Superfund" law) in any way related to Verdantas' assistance with the storage, transportation or disposal of the Waste, except to the extent such Claims result from Verdantas' gross negligence or willful misconduct.
- 11. Client Responsibilities.**
- 11.2 Client shall provide such reasonable assistance as is required by Verdantas in connection with Services, including, without limitation, the assistance as specified in the Proposal. Client will provide Verdantas with the following, as applicable:
- A. Reasonable ingress to and egress from the Site for Verdantas and its subcontractors and their respective personnel, equipment and vehicles, including but not limited to obtaining any, site access, consents or easements and complying with their terms. If Client does not own the project site, Client warrants and represents to Verdantas that Client has the authority and permission of the owner and occupant of the project site to grant this right of entry to Verdantas.
 - B. If set forth in the Scope of Services, Verdantas may require that an authorized, knowledgeable representative of the Site owner be present as a condition of the performance of the Services. Verdantas' ability to comply with the schedule for performance of Services is contingent upon timely and complete Site access. Verdantas shall not be responsible for damages or delays arising from the Client's actions or inactions.
 - C. Verdantas shall have no responsibility or liability for any aspect or condition of a project site now existing, or hereinafter arising or discovered. Verdantas shall not, by its entry into a project site or the performance of the Services, assume any

responsibilities or liability with respect to a project site except to the extent the aspect or condition of the project site was negligently caused or created by Verdantas.

- D. Clean, secure and unobstructed space at the Site, as applicable and available, for Verdantas' and its subcontractors' equipment and vehicles.
 - E. Specifications (including, without limitation, facility schematics, Site schematics, engineering drawings and plot plans) detailing the construction of underground and aboveground facilities located at the Site that pertain to Verdantas' scope of work or are necessary to enable Verdantas to perform the Services.
 - F. Approval of each specific location for boring, drilling, excavation or other intrusive work and identification of concealed or underground utilities, structures, obstructions, obstacles or sensitive conditions before Verdantas commences work at the location. If Client does not identify the location of the concealed and underground items or approve each location of intrusive work, Client shall indemnify and defend Verdantas against any harm or injury arising out of or related to contact with such hazards.
 - G. Client's selection of any hazardous waste transporter and disposal facility and Client's arrangements for execution of the waste generator portion of any bill of lading, waste manifest, waste profile and related documents.
 - H. All information related to the Services or subject matter thereof in Client's possession, custody or control reasonably required by Verdantas or the Proposal.
- 11.2 Verdantas has the right to rely, without independent investigation or inquiry, on the accuracy and completeness of all information provided by, on behalf of, or at the request of Client or any governmental agency to Verdantas or any Verdantas subcontractor. Client agrees to review all Proposals, designs, schematics, drawings, specifications, reports and other deliverables prepared by Verdantas for the accuracy and completeness of factual information provided by or on behalf of Client for inclusion and to provide Verdantas with any further information within Client's possession that may affect the accuracy or completeness of Services.
- 11.3 Full payment for Services is a condition precedent to Client's rights in Verdantas work product. If Services involve electronic data files that are maintained by or for Client, Client is responsible for maintaining backup copies of such files.
- 11.4 Unless otherwise expressly agreed in writing by the parties, Client is responsible for Site security.
- 11.5 As to any dispute involving Client or the subject matter of the Services in which Verdantas is either not a named party or not at fault, Client shall pay Verdantas for any reasonable attorney's fees, other legal fees and expenses, and other costs incurred and the time of Verdantas' personnel spent in responding, defending or participating, including but not limited to all such costs and time of Verdantas or its personnel when called or subpoenaed for depositions, examinations, appearances or document production.
- 11.6 During the period of performance and for one year thereafter, Client will not target and then hire any Verdantas professional providing services to Client under this Agreement. Without limiting any damages or other remedies, immediately upon any breach of the foregoing, Client will pay Verdantas an amount equal to 50% of Verdantas professional's ending annual salary with Verdantas.

12. Changes in Scope of Services.

- 12.1 Verdantas shall complete its Services as set forth in the Scope of Services, unless they have been modified. The Scope of Services may be changed as directed by the Client, or by unforeseen circumstances, as agreed by Client and Verdantas. Verdantas shall be entitled to equitable adjustment in compensation and schedule based on changes including, but not limited to, those set forth below.
- A. A change in instructions or approvals given by the Client that necessitate revision in the Services, changes to Services previously performed, or changes to the performance of Services to be performed.
 - B. Enactment or revision of codes, laws, or regulations or official interpretations of them, which necessitate changes to previously performed Services or Services yet to be performed.
 - C. Decisions of the Client not rendered in a timely manner.
 - D. Significant change in the Project including, but not limited to, size, quality, complexity, schedule, budget, or procurement method.

- E. Failure of performance on the part of the property Owner (if that entity is not the Client) or other Contractors not responsible to or controlled by Verdantas.
 - F. Preparation for and attendance at unscheduled meetings, hearings, public workshops, or dispute resolution or legal proceeding, except where Verdantas is a party thereto.
 - G. Delays resulting from work suspensions on the part of Verdantas in response to Client's late payment of invoices.
- 12.2 In such event, the Client may choose to: (i) authorize completing the scope as originally defined; (ii) authorize additional funds to complete the revised scope of work; or (iii) request that work be stopped at a specific expenditure level. If option 3 is chosen, Verdantas will turn over such data, results and materials completed at the authorized level. In any of these events, Client will pay for all work properly performed, and Verdantas and Client shall both continue to fulfill their obligations under this Contract.
- 13. Use of Name.** Client authorizes Verdantas to use Client's name, and a general description of the Services and subject matter thereof, as a reference for prospective clients and projects.
- 14. No Third Party Reliance.** Except as provided in Section 20.1, the Contract does not, and is not intended to, grant to any person other than Verdantas and Client any benefit, right or remedy hereunder. Unless otherwise expressly agreed by Verdantas in writing, Client will not provide Verdantas' work product to any third party, and no third party will have the right to rely on the Services or Verdantas' work product. Services are performed solely for the purposes stated in the Proposal. Client's modification of Services, or use of Services for any other purpose, is at Client's sole risk. If a court determines, notwithstanding this Section 14, that a third party has the right to rely on Services, to the fullest extent allowable under applicable law, such reliance is subject to the limitations included in the Contract. Client agrees that Verdantas shall have no liability for Claims resulting from Client directly or indirectly providing Verdantas work product to a third party absent Verdantas' prior express written consent.
- 15. Intellectual Property.** Client acknowledges and agrees that Verdantas shall retain ownership rights in all work product conceived, developed or made by Verdantas and its Affiliates in the performance of the Services including all documents, data, calculations, field notes, estimates, work papers, reports, materials, methodologies, technologies, know-how and all other information prepared, developed, or furnished by or on behalf of Verdantas. Upon its receipt of payment in full for the Services, Verdantas shall grant to Client a non-exclusive, royalty-free license to use such work product only for the project, as specified by the Proposal, for the purposes for which it was prepared by Consultant. Client acknowledges and agrees that Verdantas shall maintain all ownership rights in technical information, inventions, discoveries, improvements, and copyrightable material, made or conceived by Verdantas prior to its commencing performance of the Services or developed by Verdantas outside the scope of the Services.
- 16. Electronic Data.**
- 16.1. Unless the Proposal provides otherwise, electronic data transferred to Verdantas from the Client or to the Client from Verdantas, including their independent contractors or agents, is transmitted solely as a convenience to the recipient and shall not be considered "Record Documents". All documents considered to be "Record Documents" shall be in printed form ("hard copies") and shall be referred to and shall govern in the event of any inconsistency between the hard copy and the electronic data.
 - 16.2. In the event the electronic data provided by Consultant to Client for a specific project is altered in any way, in whole or in part, whether intentionally or unintentionally, or the data is used by Client as part of a future project, the Client agrees that Verdantas shall have no liability for any and all losses, costs, damages, expenses (including reasonable attorney's fees and/or costs of defense and/or settlement) or liabilities which the Client may suffer or sustain or be liable for, and from and against any and all claims, demands, and suits for injury or death to any person, including employees of the Client and Verdantas, and for damage to and destruction of property, including property of the Client and Verdantas.
 - 16.3. Verdantas makes no warranty as to the compatibility of the electronic data for any operating system, software, or software version other than that stated in a specific project Scope of Work agreed to between Client and Verdantas.
 - 16.4. Electronic files are subject to deterioration due to circumstances including, but not limited to, age, magnetic fields, extreme temperatures, erasure, and alteration whether inadvertent or otherwise. In addition, software and hardware systems can become obsolete. By accepting electronic data, Client acknowledges these risks and agrees to waive any and all claims against Verdantas in the event such deterioration or alteration occurs.
- 17. Severability.** Each provision of these Terms is distinct and severable from the others. If one or more provisions is or becomes invalid, unlawful or unenforceable in whole or in part, the validity, lawfulness and enforceability of the remaining provisions (and of the same provision to the extent enforceable) will not be impaired, and the Parties agree to substitute a provision as similar to the offending provision as possible without its being invalid, unlawful or unenforceable.

18. Governing Law; Conflict Resolution.

- 18.1. The Contract is governed by and shall be construed in accordance with the laws of the State in which the Project is located. The State courts have exclusive jurisdiction and venue over all disputes arising out of the Contract and is deemed to be the place of performance for all obligations under the Contract. The Parties waive any objection to the State courts on grounds of inconvenient forum or otherwise.
- 18.2. In an effort to resolve any conflicts that arise under this Contract, during the performance of the Services Client and Verdantas agree that all disputes shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. Client and Verdantas further agree to waive their rights to a jury trial of any conflict related hereto. All causes of action, including but not limited to actions for indemnification, arising out of or relating to Verdantas' work shall be deemed to have accrued and the applicable statutes of limitation shall commence to run not later than either the date of substantial completion of the Services, for acts or failures to act occurring prior to substantial completion, or the date of issuance of Verdantas' final invoice for acts or failures to act occurring after substantial completion of the Services.

19. Interpretation. Words in the singular include the plural and vice versa. Section captions are for convenience only and do not affect the meaning or construction of the terms set forth in this Master Services Agreement. A reference to a specific item as included within a general category does not exclude items of a similar nature, unless expressly stated otherwise. If any provision of the terms set forth in this Master Services Agreement is inconsistent with the terms included in the Proposal, the terms in the Proposal shall control.

20. Miscellaneous.

- 20.1. *Other Parties.* If Client engages Verdantas to provide Services on behalf of or for the benefit of another party (a "Client Party"), Client represents and warrants to Verdantas, as a material inducement to enter the Contract, that it has the authority to bind the Client Party to the Contract and that Client's signature on, or acceptance of, the Proposal does bind the Client Party. The limitation of liability in Section 9.4 applies jointly, not severally, to Client Indemnitees, any Client Party and any third party as provided in Section 14. If Verdantas in its sole discretion agrees in writing to Client's request that Verdantas seek payment from the Client Party, Client will nevertheless retain primary responsibility for payment for Services.
- 20.2. *Law Firms.* If Client engages a law firm, or if a law firm or other representative signs the Proposal or other documents or otherwise instructs Verdantas to take or refrain from taking any action, Verdantas is entitled to assume that the law firm or other representative has authority to so instruct Verdantas. If the law firm or other representative may or will rely on Services, its rights will be limited to those granted to Client in the Contract.
- 20.3. *Subcontracts.* Verdantas may subcontract all or any part of the Services as specified in project specific proposal to be reviewed and approved by Client. Such subcontracting shall not relieve Verdantas of any of its obligations under these Terms and Conditions or its Contract with Client.
- 20.4. *Entire Agreement.* Upon Client's acceptance of the Proposal, the Contract constitutes the entire understanding between the Parties and the full and final expression of such understanding, and supersedes all prior and contemporaneous agreements, representations or conditions, express or implied, oral or written.
- 20.5. *Waiver; Amendment.* A provision of the Contract may be waived, deleted or modified only by a document signed by the Parties stating their intent to modify the Contract.
- 20.6. *Survival.* Sections 5, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19 and 20 and all provisions of the Contract that by their nature would usually be construed to survive an expiration or termination shall survive the expiration or termination of the Contract.
- 20.7. *Printed Forms.* Client may use its forms and agreements to administer any agreement between Verdantas and Client, but such use is for convenience only, and any provision therein that conflicts with the Contract is void.
- 20.8. *Notices.* Notices hereunder will be provided in writing to the persons identified in the Proposal and delivered by the United States Postal Service or such services as may be agreed by the Parties in writing.
- 20.9. *Relationship of Parties.* The Contract does not give either Party the authority to act as an agent or partner of the other Party, or to bind or commit the other Party to any obligations. Nothing contained in the Contract shall be construed as creating a partnership, joint venture, agency, trust or other association of any kind.
- 21. Term.** The Contract is effective the date it is signed by both Parties and shall continue until (1) the Scope of Services has been completed and all Verdantas' invoices have been paid in full; or (ii) the Contract is terminated by a Party thereto.

22. Additional Terms. Additional provisions governing Verdantas' performance of Services, if attached to these Terms by Verdantas, are made part of the Contract.

23. Language. Client hereby confirms and agrees that this Contract and all documents relating hereto be drafted in English.

IN WITNESS WHEREOF, the parties hereto have executed this Master Services Agreement upon the date shown below in several counterparts, each of which shall be considered as an original.

CLIENT:

By: _____

Name: _____

Title: _____

Date: _____

CONSULTANT:

VERDANTAS LLC

By: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT A
FOR
MASTER SERVICES AGREEMENT FOR PROFESSIONAL SERVICES
VERDANTAS LLC

TASK ORDER NO: _____
VERDANTAS PROJECT CODE: _____
CONTRACT NUMBER: _____

Subject to the terms and conditions of the above referenced Contract, the Consultant agrees to perform the following Scope of Work (briefly describe services and reference the proposal; for scope changes to existing proposals, a separate proposal may not be required unless requested by Client):

example

NUMBER OF COPIES OF DELIVERABLE: _____

ESTIMATED TOTAL COST: \$ _____

VERDANTAS PROJECT CONTACT: _____

CLIENT PROJECT CONTACT: _____

VERDANTAS AUTHORIZATION: _____ DATE: _____

CLIENT AUTHORIZATION: _____ DATE: _____

(Please return one signed original to Verdantas' Project Contact and retain one signed original for Client's records)