

## MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the "Effective Date"), between VC3, Inc., a Delaware corporation having its principal place of business at 1301 Gervais Street, Suite 1800, Columbia, SC 29201 ("Company"), and Town of Thompson's Station, TN, a having its principal place of business at 1550 Thompson's Station Road West, Thompson's Station, TN 37179. ("Client").

WHEREAS, Client desires to receive certain professional services from Company;

Client and Company hereby agree as follows:

### 1. Services To Be Performed.

1.1 **Services.** Company will provide computer system and network maintenance, software, consulting and professional services (the "Services") as mutually agreed to in a written executed attachment to this Agreement by Company and Client (a "Work Order"); provided however that the parties recognize that Company may from time to time provide Services to Client at Client's request without a Work Order, and in such cases, these Services shall be subject to and governed by the terms and conditions of this Agreement and performed by Company on a time and materials basis and invoiced at the hourly billing rates specified in Exhibit A.

1.2 **Form of Work Order.** Each Work Order will conform to substantially the following format:

(a) The Work Order will contain "Work Order" in the title.

(b) The contents of the Work Order may be included in the body of the Work Order, or in separately signed Attachments, as the parties consider most practical. The Work Order shall include a provision for the dated signatures of authorized representatives of both parties.

1.3 **Change Orders.** Client may request a change in the scope or nature of the Services in a Work Order at any time. However, changes to the scope of the Services in a Work Order can be made only in writing executed by both parties.

### 2. Charges for Services.

2.1 **Charges.** Company shall be entitled to compensation for the performance of the Services as stated in each Work Order. Unless otherwise expressly stated in a Work Order, Company's compensation will be based on direct labor hours charged at fixed labor rates as specified in Exhibit A. The Work Order may call for a budget of expected charges as a way for both parties to monitor performance. Except as otherwise expressly set forth in a Work Order, all Services that are identified to be rendered on a time and materials basis will be invoiced at the hourly billing rates specified in Exhibit A.

2.2 **Invoices.** Unless otherwise stated in a Work Order, payment for the Services is due monthly when and as performance is rendered. Company shall issue invoices to Client for charges when and as they come due. Client shall make payment to Company of all such

invoices within thirty (30) days from the date of such invoice.

2.3 **Expenses.** Client shall pay Company for all reasonable expenses incurred by Company in the performance of the Services, including travel, living, and out-of-pocket expenses incurred pursuant to this Agreement, all of which shall be outlined in a Word Order.

2.4 **Effect of Late Payment.** All late payments by Client shall bear interest at a rate of one and one percent (1.0%) per month or partial month during which any sums were owed and unpaid, or the highest rate allowed by law, whichever is lower.

2.5 **Collection Costs.** Client shall reimburse Company for any expenses and costs it incurs to collect any amounts due to Company under this Agreement, including reasonable attorneys fees.

3. **Term; Termination.** The term of this Agreement shall continue from the Effective Date until the earlier of (a) expiration of the term of all Work Orders referencing this Agreement or (b) termination of this Agreement as provided in this Agreement. Either party may terminate a Work Order or this Agreement, as applicable, for material breach by the other party of the Work Order or this Agreement, as applicable, which is not cured within thirty (30) days from the receipt by the party in breach of a written notice from the other party specifying the breach in detail. Client shall be liable for payment to Company for all Services rendered prior to the effective date of any such termination. Expiration or termination of any Work Order or this Agreement for any reason will not release either party from any liabilities or obligations set forth in any Work Order or this Agreement which (a) the parties have expressly agreed will survive any such expiration or termination or (b) remain to be performed or by their nature would be intended to be applicable following any such expiration or termination. The forgoing notwithstanding, the Client may terminate this Agreement for any reason upon sixty (60) days written notice to the Company.

#### 4. **Proprietary Protections.**

##### 4.1 **Ownership Rights**

(a) **General.** Each party will retain all rights to any software, ideas, concepts, know-how, development tools, techniques or any other proprietary material or information that it owned or developed prior to the Effective Date, or acquired or developed after the Effective Date without reference to or use of the intellectual property of the other party. All software that is licensed by a party from a third party vendor will be and remain the property of such vendor. No licenses will be deemed to have been granted by either party to any of its patents, trade secrets, trademarks or copyrights, except as otherwise expressly provided in this Agreement. Nothing in this Agreement will require Company or Client to violate the proprietary rights of any third party in any software or otherwise. Notwithstanding anything to the contrary in this Agreement, Company (i) will retain all right, title and interest in and to all software development tools, know-how, methodologies, processes, technologies or algorithms used in performing the Services which are based on trade secrets or proprietary information of Company or are otherwise owned or licensed by Company (collectively, "tools"), (ii) will be free to use the ideas, concepts, methodologies, processes and know-how which are developed or created in the course of performing the Services and may be retained by Company's employees in intangible form, all of which constitute substantial rights on the part of Company in the technology developed as a result of the Services performed under this

Agreement.

(b) **Materials Developed for or Delivered to Client.** Client agrees that all software and other materials (including, but not limited to customizations, modifications, specifications, documentation and training materials) developed for or delivered to Client pursuant to this Agreement or any Work Order, including all related copyrights, patent rights, trade secrets, ideas, designs, concepts, techniques, inventions, discoveries or other intellectual property rights (collectively, the "Materials"), shall be the exclusive property of Company and the Company shall own all right, title and interest therein. In this connection, Client acknowledges that all Materials which are or may be developed pursuant to this Agreement or any Work Order are and shall be the intellectual property and products of Company, and Client hereby transfers and assigns any and all rights in and to the Materials to Company, its successors and assigns, including all intellectual property rights relating thereto. From time to time upon Company's request, Client shall confirm such assignment by execution and delivery of such assignments, confirmations of assignment, or other written instruments as Company may request. Company agrees that Client shall have a limited nonexclusive license to use the Materials internally to the extent necessary to carry out and fulfill the terms and conditions of the Work Order for which the Materials were developed and shall have the right to grant a limited nonexclusive license to the third parties specifically identified in a Work Order to use the Materials solely for the purposes contemplated by such Work Order, provided that such third parties shall first agree in a signed writing to be bound by the terms of this Agreement or such terms as may be acceptable to Company.

(c) **Specific Deliverables Owned by Client.** Notwithstanding the foregoing provisions of Section 4.1(b) but subject to any third party rights or restrictions and the provisions of Section 4.1(a) and the other provisions of this Section 4.1(c), Client will own the copyright in and to Materials that (i) are developed for and delivered by Company to Client, (ii) are paid for by Client, and (iii) are clearly and specifically identified in a Work Order as governed by the provisions of this Section 4.1(c) (the "Specific Client Owned Deliverables"). Notwithstanding the foregoing, Company will retain ownership of any Company-owned software or development tools that are used in producing the Specific Client Owned Deliverables and become embedded in the Specific Client Owned Deliverables. Company hereby grants to Client a perpetual (subject to compliance with this sentence), royalty-free, nontransferable, nonexclusive license to use such embedded software and tools (if any) solely in connection with Client's internal use and exploitation of the Specific Client Owned Deliverables and only so long as such software and tools (if any) remain embedded in the Specific Client Owned Deliverables and are not separated therefrom. Company will own all intellectual property rights in or related to the Specific Client Owned Deliverables other than the copyright ownership rights granted to Client pursuant to this Section 4.1(c).

4.2 **Client Information.** Company recognizes and agrees that, except as specified in Section 4.1, it has no claim of ownership to any data, materials or information submitted by Client to Company or the Services ("Client Information"), which Client Information is being provided to Company solely for the purposes of enabling Company to render the Services, and that title and all ownership rights in and to such Client Information shall at all times remain with Client. Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use all Client Information.

## **5. Limited Warranty and Disclaimers.**

5.1 **Limited Warranty.** Company warrants to Client that the Services, as and when delivered or rendered hereunder, will substantially conform to the description of services or specifications set forth in the applicable Work Order. Company's sole liability under the foregoing warranty shall be to provide the services described in Section 5.3 hereof.

5.2 **DISCLAIMER OF WARRANTIES. THE WARRANTY SET FORTH IN SECTION 5.1 STATES COMPANY'S SOLE AND EXCLUSIVE WARRANTY TO CLIENT CONCERNING THE SERVICES HEREUNDER. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.1, THE SERVICES ARE PROVIDED STRICTLY "AS IS" AND COMPANY MAKES NO ADDITIONAL WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE SERVICES OR ANY MATTER WHATSOEVER. IN PARTICULAR, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT ARE EXPRESSLY EXCLUDED. COMPANY DOES NOT WARRANT, AND SPECIFICALLY DISCLAIMS THAT THE SERVICES BEING PROVIDED WILL RESULT IN COST SAVINGS, PROFIT IMPROVEMENT, OR THAT THE SERVICES WILL BE ERROR-FREE. THIS IS A LIMITED WARRANTY AND IS THE ONLY WARRANTY MADE BY COMPANY.**

5.3 **Notice Obligation; Remedy.** Client shall notify Company in writing within thirty (30) days after completion of the Services in question when any of the Services fail to substantially conform to the description of services or specifications set forth in the applicable Work Order. Such notification shall include the detailed information necessary for Company to verify such nonconformity. Upon actual receipt of such notification and verification of the nonconformity, Company shall correct the nonconformity so that the Services shall substantially conform with the agreed description of services or specifications in the applicable Work Order. Client agrees to pay Company for all personnel time and expenses incurred in investigating reported nonconformities when the alleged nonconformities are not discovered. The passage of the thirty (30) day period after completion of the Services in question without the notification described herein shall constitute final acceptance of the Services.

## **6. Limitation of Liability.**

6.1 **COMPANY'S LIABILITY ON ANY CLAIM, LOSS OR LIABILITY ARISING OUT OF, OR CONNECTED WITH THIS AGREEMENT, THE SERVICES OR USE OF THE PRODUCT OF ANY SERVICES FURNISHED HEREUNDER, SHALL IN ALL CASES BE LIMITED SOLELY TO CORRECTION OF NONCONFORMITIES WHICH DO NOT SUBSTANTIALLY CONFORM WITH THE AGREED DESCRIPTION OF SERVICES IN A WORK ORDER, OR SPECIFICATIONS IDENTIFIED IN A WORK ORDER.**

6.2 **IF FOR ANY REASON COMPANY IS UNABLE OR FAILS TO CORRECT NONCONFORMITIES AS PROVIDED, COMPANY'S LIABILITY FOR DAMAGES ARISING OUT OF ANY WORK ORDER FOR SUCH FAILURE, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), LAW, EQUITY OR OTHERWISE, SHALL NOT EXCEED THE AMOUNTS PAID BY CLIENT FOR THAT PORTION OF THE SERVICES WHICH FAIL TO CONFORM. IN NO EVENT SHALL COMPANY BE LIABLE UNDER COMPANY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY WORK ORDER (INCLUDING FOR ANY AMOUNTS IN EXCESS OF CLAIM AND/OR SERIES OF CLAIMS, WHETHER RELATED OR UNRELATED) WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), LAW, EQUITY OR OTHERWISE, EXCEED THE AMOUNTS PAID BY CLIENT TO COMPANY INFOR SERVICES OF COMPANY DURING THE NINETY DAY (90) PERIOD PRECEDING ANY FAILURE**

**OR BREACH BY THE EVENT(S) GIVING RISE TO THE CLAIM (OR TO THE FIRST CLAIM IN A SERIES OF CLAIMS). FOR THE AVOIDANCE OF DOUBT, ANY AMOUNTS PAID TO COMPANY OR CLAIM BY CLIENT FOR THIRD PARTY HARDWARE, SOFTWARE, PRODUCTS OR SERVICES SHALL NOT BE A PART OF AMOUNTS PAID FOR SERVICES OF COMPANY.**

**6.3 UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE TO CLIENT FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OR CORRUPTION OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), LAW, EQUITY OR OTHERWISE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM OR DAMAGES ASSERTED BY ANY THIRD PARTY.**

**6.4 CLIENT ACKNOWLEDGES THAT COMPANY HAS SET ITS FEES, AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE FOREGOING LIMITATION OF LIABILITY IS INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY SET FORTH IN THIS AGREEMENT.**

**6.5 THE PROVISIONS OF SECTIONS 5, 6 AND 7 ARE CLIENT'S EXCLUSIVE REMEDIES RELATED TO THE SERVICES, ANY FAILURE BY COMPANY TO CORRECT NONCONFORMITIES IN THE SERVICES, OR FOR BREACH BY COMPANY OF THIS AGREEMENT OR A WORK ORDER AND SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF SUCH REMEDIES.**

6.6 Client is responsible for adopting reasonable measures to limit Client's exposure with respect to such potential losses and damages, including (without limitation) examination and confirmation of results of the Services prior to use thereof, provision for identification and correction of errors and omissions, and preparation and storage of backup or duplicate data. Client is also responsible for complying with all local, state, and federal laws pertaining to the use and disclosure of any Client Information.

## **7. General Provisions.**

7.1 **Non-Hire Provision.** Each party to this Agreement agrees that it will not hire, employ, or contract with, or solicit to hire, employ, or contract with, any person who is, or within the immediately preceding one year was, an employee or subcontractor of the other party to this Agreement for any purposes during the term of this Agreement, or for a period of one year after this Agreement terminates.

7.2 **Recording.** (a) Some Services provided may involve recording and/or monitoring. For such Services, information uploaded to or in any way passing through computer systems used to provide the Services, including written, visual, or oral communications or other electronic means, may be recorded or monitored for quality assurance and diagnostic purposes. By accessing or using the Services, Client consents to such recording and monitoring. Client is also solely responsible for informing anyone with whom Client interacts or otherwise communicates via the Services that information uploaded to or in any way passing through

the Services, including written, visual or oral communications or other electronic means, may be recorded or monitored for quality assurance and diagnostic purposes.

(b) If phone conferences/conference bridges are applicable to the Services being provided to Client, Client acknowledges that the laws of certain jurisdictions may require that if a conference is recorded, all participants in the conference must be informed in advance of any such recording, so they may consent to being recorded (if required by applicable laws). Client acknowledges and agrees that Client shall be solely responsible for complying with all Applicable Laws and Third-Party Rights when using recording features (this includes Client's obligation to obtain the consent, if required by applicable laws, of all participants before the commencement of the recording). Company shall have no liability to Client or any participant in Client's recorded conference with respect to Client's obligations under this Section 8.2.

7.3 **Conflict.** Any purchase order or other document issued by Client is for administrative convenience only. In the event of any conflict between this Agreement and any purchase order, this Agreement shall prevail.

7.4 **Survival.** In the event of any expiration or termination of this Agreement, Sections 2, 3, 4, 5, 6, and 7 of this Agreement shall survive and shall continue to bind the parties.

8.5 **Governing Law.** This Agreement shall be governed in all respects by the laws of the United States of America and the State of Tennessee without regard to conflicts of law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

8.6 **Forum.** All disputes arising under this Agreement shall be brought in the state or federal courts located in the middle district of Tennessee, as permitted by law.

8.7 **Injunctive Relief.** It is understood and agreed that, notwithstanding any other provisions of this Agreement, breach of the provisions of this Agreement by Client will cause Company irreparable damage for which recovery of money damages would be inadequate, and that Company shall therefore be entitled to obtain timely injunctive relief to protect Company's rights under this Agreement in addition to any and all remedies available at law.

8.8 **Notices.** All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery or five (5) days after deposit in the mail. Notices shall be sent to the parties at the addresses described on the first page of this Agreement or such other address as either party may designate for itself in writing. All notices to Company must be to its President to be effective.

8.9 **No Agency.** Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

8.10 **Force Majeure.** Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond the reasonable control of such party.

8.11 **Waiver.** The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

8.12 **Severability.** In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

8.13 **Headings.** The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect this Agreement.

8.14 **Assignment.** Neither this Agreement nor any rights or obligations of Client hereunder may be assigned, sold, or otherwise transferred by Client in whole or in part (including by merger, reorganization, consolidation, sale of all or any portion of the assets of Client or change in control of Client) without the prior written approval of Company. For the purposes of this Section 8.14 ("Assignment"), a change in control means a change in the persons or entities who control fifty percent (50%) or more of the equity securities or voting interest of Client as of the date of this Agreement.

8.15 **Right to Engage in Other Activities.** Client acknowledges and agrees that Company may provide information technology services for third parties at any Company facility that Company may utilize from time to time for performing the Services. Nothing in this Agreement will impair Company' right to acquire, license, market, distribute, develop for itself or others or have others develop for Company similar technology performing the same or similar functions as the technology and Services contemplated by this Agreement.

8.16 **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

8.17 **Entire Agreement.** This Agreement together with any Work Orders attached hereto completely and exclusively states the agreement of the parties regarding its subject matter. It supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. This Agreement shall not be modified except by a subsequently dated written amendment signed on behalf of Company and Client by their duly authorized representatives.

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

**COMPANY:**

**VC3, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CLIENT:**

**Town of Thompson's Station, TN**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**Exhibit A**  
**Hourly Rates**