

# GROUND & FORM ADVISORY LLC

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## MASTER SERVICES AGREEMENT (MSA)

This Master Services Agreement ("Agreement") is entered into as of [Effective Date] (the "Effective Date"), by and between **[Client Legal Name]**, a [State] [Entity Type], with a principal place of business at [Address] ("Client"), and **Ground & Form Advisory LLC**, an Ohio Limited Liability Corporation, with a principal place of business at 815 Superior Ave STE 1618-A2, Cleveland, Ohio ("Advisor"). Client and Advisor may be referred to individually as a "Party" and collectively as the "Parties."

## §01 / PURPOSE AND STRUCTURE

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### §01.1 / Purpose.

This Agreement establishes the general terms and conditions under which Advisor may provide performance-based business advisory, strategic, operational, financial, or related professional services to Client (the "Services").

### §01.2 / Statements of Work.

Specific Services shall be described in one or more written Statements of Work (each, an "SOW"), executed by both Parties and incorporated herein by reference. In the event of a conflict, the order of precedence shall be: (a) the applicable SOW; (b) this Agreement.

## §02 / SCOPE DEFINITION AND CHANGE FRAMEWORK

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### §02.1 / Initial Scope Definition.

Each SOW shall define, at a minimum:

- Objectives and success metrics (including any performance-based measures);
- Deliverables and exclusions;
- Assumptions and dependencies;
- Client responsibilities and data inputs;
- Timeline and milestones;
- Fees and performance-based compensation, if any.

### §02.2 / Change Control.

Any change to scope, assumptions, success metrics, or deliverables shall be evaluated against the Materiality Threshold defined in Section 5.3.

### §02.5 / Non-Material Scope Adjustments.

Changes that do not reasonably increase Advisor effort, risk, or cost beyond the Materiality Threshold ("Non-Material Scope Adjustments") may be implemented without a new SOW or Change Order and shall not alter fees or liability caps.

### §02.4 / Material Scope Changes; Mandatory New SOW Trigger.

Any change that reasonably increases Advisor effort, risk, timeline, or potential exposure **in excess of the Materiality Threshold** (a "Material Scope Change"; as defined in §05.3) shall **automatically require execution of a new SOW** prior to continuation of Services. Advisor shall have no obligation to proceed with a Material Scope Change absent execution of such new SOW, and no waiver shall be implied by continued performance. Billing or performance shall not constitute acceptance or waiver.

## **§02.5 / Scope Creep Protection.**

Client acknowledges that repeated Non-Material Scope Adjustments that cumulatively exceed the Materiality Threshold shall be deemed a Material Scope Change and shall trigger a new SOW or Change Order.

## **§02.6 / No Implied Services.**

Advisor shall have no obligation to provide services outside the expressly defined scope of an SOW unless agreed in writing.

## **§05** / RISK DISCLOSURE AND ACKNOWLEDGMENT

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### **§05.1** / Advisory Nature of Services.

Client acknowledges that the Services are advisory in nature and involve professional judgment, estimates, and recommendations, not guarantees of results. Advisor does not provide legal, tax, accounting, investment, or other regulated professional advice unless expressly stated in an SOW.

### **§05.2** / Business Risk Allocation.

Client retains sole responsibility for business decisions, implementation of recommendations, and resulting outcomes. Advisor does not control Client operations and shall not be deemed a fiduciary unless expressly stated in an SOW. No course of dealing shall be construed to create a fiduciary relationship.

### **§05.5** / Expected vs. Actual Outcomes.

Any financial projections, performance improvements, or expected losses discussed are estimates based on assumptions identified in the SOW and may differ materially from actual results.

### **§05.4** / Timing of Payments.

Invoices shall be due and payable within **[30] days of receipt** unless otherwise stated in the applicable SOW.

## §04 / PERFORMANCE-BASED FEES AND LOSS FRAMEWORK

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### §04.1 / Performance Metrics.

Performance-based compensation, if applicable, shall be calculated strictly in accordance with the metrics, baselines, attribution rules, and measurement periods defined in the SOW. Performance fees are **consideration for services**, not damages or penalties.

### §04.2 / Attribution and Causality.

Unless expressly stated otherwise, Advisor shall not be responsible for losses attributable to: (a) Client implementation choices; (b) market or economic conditions; (c) third-party actions; or (d) deviations from agreed assumptions.

### §04.5 / Expected Loss Framework.

To the extent the SOW references expected gains or avoided losses, such amounts are used solely for fee-calculation or prioritization purposes and shall not constitute representations, warranties, or guarantees.

## §05 / LIMITATION OF LIABILITY

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### §05.1 / Exclusion of Certain Damages.

To the maximum extent permitted by law, neither Party shall be liable for any indirect, incidental, consequential, special, exemplary, or punitive damages, including lost profits, loss of business, or loss of goodwill, even if advised of the possibility of such damages.

### §05.2 / Specified Exposure Amount.

Except for Excluded Claims (defined below), Advisor's total cumulative liability arising out of or relating to this Agreement or any SOW shall not exceed the **Specified Exposure Amount**, defined as the lesser of: (a) **[\_] % of the total fees payable under the applicable SOW**; or (b) **[\$Fixed Dollar Cap]**.

### §05.5 / Materiality Threshold.

For purposes of breach, scope governance, indemnification triggering events, and damage claims, a matter shall be deemed "Material" only if the reasonably foreseeable direct damages, fees, costs, **or exposure exceed [\_] % of the total contract price under the applicable SOW** (the "Materiality Threshold"). Amounts, claims, or changes below the Materiality Threshold shall not give rise to liability or require a new SOW, except as expressly provided in §5.4A. This allocation reflects the Parties' intent to avoid disproportionate dispute costs relative to contract value.

For avoidance of doubt, amounts below the Materiality Threshold may still constitute a breach, but shall not give rise to damages, termination rights, or mandatory scope restructuring except as expressly stated herein.

### §05.4 / Excluded Claims.

The limitations in this Section shall not apply to: (a) gross negligence or willful misconduct; (b) fraud; or (c) indemnification obligations expressly set forth in §06, subject to the Specified Exposure Amount unless otherwise prohibited by law.

## §05.5 / Indemnification Within Threshold Band.

Notwithstanding §05.3, any amounts paid or payable **between the original SOW contract price and the Materiality Threshold** (the "Threshold Band") shall remain subject to the indemnification obligations set forth in §06, but shall not expand Advisor's liability cap beyond the Specified Exposure Amount unless expressly agreed in a new SOW.

The Parties acknowledge that the Threshold Band allocation reflects negotiated commercial risk sharing and does not expand Advisor's total liability beyond the Specified Exposure Amount absent express written agreement.

## **§06** / INDEMNIFICATION

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### **§06.1** / **Advisor Indemnity.**

Advisor shall indemnify, defend, and hold harmless Client from third-party claims arising from Advisor's gross negligence, willful misconduct, or infringement of a third party's intellectual property rights in Advisor deliverables.

### **§06.2** / **Client Indemnity.**

Client shall indemnify, defend, and hold harmless Advisor from third-party claims arising from: (a) Client data, instructions, or implementation decisions; (b) Client's violation of law; or (c) Client's misuse of Advisor's recommendations.

### **§06.5** / **Procedure.**

The indemnified Party shall promptly notify the indemnifying Party of any claim, allow control of the defense, and provide reasonable cooperation.

### **§06.4** / **Multi-State Enforceability.**

The Parties intend these indemnification obligations to be interpreted to the fullest extent permitted under applicable state law, including Ohio, and severed or reformed only to the extent required to maintain enforceability.

## **§07 / INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS**

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### **§07.1 / Advisor Background Intellectual Property.**

Advisor retains all right, title, and interest in and to any and all pre-existing or independently developed intellectual property, including but not limited to methodologies, frameworks, models, processes, tools, templates, software (including source code and object code), algorithms, documentation, know-how, trade secrets, and analytical techniques (collectively, "Advisor Background Intellectual Property"), whether disclosed or made available to Client in connection with the Services.

### **§07.2 / Limited License to Client.**

Subject to Client's payment of all amounts due, Advisor grants Client a limited, non-exclusive, non-transferable, non-sublicensable license during the Term to use Advisor Background Intellectual Property solely as incorporated into the deliverables expressly identified in an SOW and solely for Client's internal business purposes.

### **§07.5 / Client Intellectual Property.**

Client retains all right, title, and interest in and to Client data, materials, and pre-existing intellectual property provided to Advisor ("Client Intellectual Property").

### **§07.4 / Deliverable Classification and Tracking.**

The Parties agree to reasonably identify and classify deliverables as either (a) Client-owned deliverables expressly designated as such in an SOW, or (b) Advisor Background Intellectual Property or derivative works thereof. Any deliverables not expressly designated as Client-owned shall be deemed Advisor Background Intellectual Property.

### **§07.5 / Return and Non-Retention Upon Termination.**

Upon termination or expiration of this Agreement or any SOW, Client shall promptly return to Advisor or, at Advisor's written direction, permanently delete or destroy all Advisor Background Intellectual Property and any copies thereof in Client's possession or control,

except to the extent embedded in Client-owned deliverables expressly permitted under an SOW or regarding residual knowledge retained in unaided human memory. Upon request, Client shall certify such return or destruction in writing.

### **§07.6 / No Implied Transfer.**

Except as expressly stated in this Agreement or an applicable SOW, no intellectual property rights are transferred, assigned, or licensed by implication, estoppel, or otherwise.

## **§07A / CONFIDENTIALITY; DATA PROTECTION; RESIDUAL KNOWLEDGE**

### **§07A.1 / Definition of Confidential Information.**

“**Confidential Information**” means any non-public information disclosed by or on behalf of either Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”), whether orally, visually, electronically, or in writing, that reasonably should be understood to be confidential given the nature of the information or the circumstances of disclosure, including without limitation:

- a) Business, financial, operational, strategic, technical, and organizational information;
- b) Data, datasets, reports, analyses, metrics, benchmarks, KPIs, SLAs, attribution methodologies, and performance measurement logic;
- c) Intellectual property, frameworks, processes, models, software, algorithms, documentation, training materials, and know-how;
- d) Pricing, fee structures, savings calculations, extrapolation methodologies, audit findings, and investment or decision-sequencing logic;
- e) Any information derived from or incorporating the foregoing.

Confidential Information includes information disclosed prior to or after execution of this Agreement if related to the Services.

## **§07A.2 / Exclusions.**

Confidential Information does not include information that the Receiving Party can demonstrate:

- a) Is or becomes publicly available without breach of this Agreement;
- b) Was lawfully known to the Receiving Party prior to disclosure;
- c) Is independently developed without use of or reference to Confidential Information;
- d) Is rightfully obtained from a third party without restriction.

## **§07A.5 / Use and Protection Obligations.**

The Receiving Party shall:

- a) Use Confidential Information solely for purposes of performing or receiving the Services;
- b) Protect Confidential Information using at least a reasonable standard of care, and no less than the care it uses to protect its own confidential information of similar sensitivity;
- c) Limit disclosure to employees, contractors, or advisors with a legitimate need to know and who are bound by confidentiality obligations no less protective than this Section.

## **§07A.4 / Performance Metrics and Attribution.**

Without limiting the foregoing, the Parties acknowledge that **performance metrics, savings calculations, attribution logic, KPIs, SLAs, audit outputs, and extrapolation methodologies** constitute Confidential Information.

Disclosure of such information shall not be deemed a waiver of confidentiality or ownership rights.

## **§07A.5 / Required Disclosures.**

A Receiving Party may disclose Confidential Information if required by law, regulation, or court order, provided that (to the extent legally permitted) it gives prompt notice to the Disclosing Party and cooperates in seeking protective treatment.

## **§07A.6 / Survival.**

Confidentiality obligations shall survive termination of this Agreement for **five (5) years**, except that obligations relating to trade secrets shall survive for so long as such information remains a trade secret under applicable law.

## **§07A.7 / Residual Knowledge.**

Nothing in this Agreement shall restrict either Party from using **generalized knowledge, skills, experience, or ideas** retained in the unaided memory of its personnel, provided such use does not involve disclosure of Confidential Information or violation of intellectual property rights.

## **§07A.8 / SOW Specific NDAs.**

If an SOW involves heightened confidentiality requirements, regulated data, or client-mandated obligations, the Parties may execute a separate non-disclosure agreement or Confidentiality Schedule applicable solely to that SOW.

In the event of conflict, such SOW-specific confidentiality terms shall govern **only with respect to that SOW**.

## **§07A.9 / No Implied Transfer.**

No confidentiality obligation shall be construed to transfer ownership of intellectual property, limit the Advisor's right to use anonymized or aggregated learnings, or restrict rights expressly preserved under §07 (Intellectual Property), §08.3 (Effect of Termination), or any Tail Period provisions. Advisor may use anonymized, aggregated, and non-identifiable data derived from the Services for internal analytics, benchmarking, and methodology improvement.

## **§07A.10 / Remedies.**

The Parties acknowledge that unauthorized disclosure or use of Confidential Information may cause irreparable harm for which monetary damages may be inadequate. Accordingly, the Disclosing Party shall be entitled to seek injunctive or equitable relief, in addition to any other remedies available at law or in equity.

## §08 / TERM AND TERMINATION

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### §08.1 / Term.

This Agreement shall commence on the Effective Date and continue until terminated.

### §08.2 / Termination for Convenience.

Either Party may terminate this Agreement or an SOW upon **[30] days'** written notice, unless otherwise stated in the applicable SOW.

### §08.5 / Termination for Cause.

Either Party may terminate immediately upon written notice if the other Party materially breaches this Agreement and fails to cure such breach within **[15-30] days** after written notice.

### §08.4 / Effect of Termination.

Upon termination or expiration of this Agreement or any SOW for any reason: (a) Client shall pay Advisor for all Services performed through the effective date of termination; and (b) **Client shall also pay Advisor all amounts due or that become due pursuant to any performance-based fees, success fees, gainshare, or other contingent compensation mechanisms defined in this Agreement or any applicable SOW, regardless of whether the underlying performance metrics, savings, gains, or results are realized, measured, or recognized after the effective date of termination**, provided such amounts are attributable to Services performed prior to termination. Such compensation constitutes earned consideration for Services rendered and shall survive termination.

Performance-based compensation shall not be forfeited solely due to termination. For avoidance of doubt, performance-based compensation payable under this Section reflects consideration for Services already performed and value delivered prior to termination, not post-termination services.

## §08.5 / Tail Period; Post-Termination Measurement.

Each SOW that includes performance-based compensation shall specify a post-termination tail period (the "Tail Period") during which performance metrics, savings, gains, or other results attributable to Advisor's Services shall continue to be measured for purposes of calculating compensation.

## §08.6 / Failure to Track; Extrapolation Right.

If during the Tail Period Client fails, refuses, or ceases to track, report, or make available the data necessary to calculate performance-based compensation in accordance with the applicable SOW, Advisor shall have the right to **reasonably extrapolate such performance metrics or savings** based on the most recent available data, agreed baselines, historical trends, or other commercially reasonable assumptions consistent with the SOW (the "Extrapolated Amounts"). Advisor may invoice Client based on such Extrapolated Amounts.

Any extrapolation shall be performed in good faith and in a commercially reasonable manner consistent with the methodologies, baselines, and assumptions set forth in the applicable SOW.

## §08.7 / Survival of Rights.

The following provisions shall survive termination:

- Confidentiality
- Intellectual Property (§07)
- Payment obligations
- Indemnification
- Limitation of liability
- Audit rights
- Tail Period rights

## §08.8 / Presumption of Accuracy; Objection Period.

Any invoice based on Extrapolated Amounts shall be **presumed accurate and payable** unless Client delivers written notice of objection within **[30] days** of receipt of the invoice,

specifying in reasonable detail the basis for disputing the extrapolation. Failure to timely object shall constitute acceptance of the invoice.

### **§08.9 / Burden of Proof.**

In the event of a timely objection, Client shall bear the burden of demonstrating, with reasonable supporting evidence, that the Extrapolated Amounts are materially inaccurate. Pending resolution of any dispute, Client shall pay the undisputed portion of the invoice.

### **§08.10 / Late Payment; Interest.**

Any undisputed amounts not paid when due shall accrue interest at the rate of **[1.5% per month or the maximum rate permitted by law, whichever is less]**, from the due date until paid.

### **§08.11 / No Avoidance of Fees.**

Client acknowledges and agrees that it shall not take any action, or fail to take any action, including cessation of tracking or reporting, for the purpose or effect of avoiding or reducing performance-based compensation due to Advisor.

Sections relating to fees, limitation of liability, indemnification, intellectual property, governing law, and any provisions that by their nature should survive shall survive termination.

### **§08.12 / No Waiver of Accrued Rights.**

Termination shall not waive or limit any rights or remedies accrued prior to termination, including the right to collect fees for value delivered or attributable to Advisor's Services.

## **§09** / GOVERNING LAW AND VENUE

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### **§09.1** / Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to conflict-of-law principles, unless otherwise agreed in an applicable SOW.

### **§09.2** / Venue.

The Parties consent to the exclusive jurisdiction of state and federal courts located in Ohio unless otherwise agreed in an applicable SOW. Notwithstanding the foregoing, Advisor may seek injunctive or equitable relief in any court of competent jurisdiction to protect its intellectual property or confidential information. The Parties acknowledge that Ohio bears a reasonable relationship to this Agreement and that venue selection is not intended to impose undue hardship on either Party.

## §10 / MISCELLANEOUS

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### §10.1 / Independent Contractor.

Advisor is an independent contractor.

### §10.2 / Commercial Reasonableness Acknowledgment.

The Parties acknowledge and agree that the pricing structures, materiality thresholds, scope-change mechanics, limitation-of-liability provisions, indemnification framework, extrapolation mechanisms, and tail-period provisions set forth in this Agreement and the SOWs are commercially reasonable, negotiated at arm's length between sophisticated parties, and reflect a fair and intentional allocation of risk.

### §10.5 / Force Majeure.

No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make previously owed payments to the other Party hereunder) when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") reasonable control, including, without limitation, the following **force majeure** events ("**Force Majeure** Event(s)") that frustrates the purpose of this Agreement: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes, travel advisory levels (level 3 or higher), or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; (i) epidemic, pandemic or similar influenza or bacterial infection (which is defined by the United States Center for Disease Control as virulent human influenza or infection that may cause global outbreak, or pandemic, or serious illness); (j) emergency state; (k) shortage of adequate medical supplies and equipment; (l) shortage of power or transportation facilities; and (m) other similar events beyond the reasonable control of the Impacted Party.

## **§10.4 / Assignment Restriction.**

Neither Party may assign this Agreement without the prior written consent of the other Party, except in connection with a merger or sale of substantially all assets.

## **§10.5 / Severability.**

If any provision is held unenforceable, it shall be reformed or severed to the minimum extent necessary.

## **§10.6 / Entire Agreement.**

This Agreement, together with all SOWs, constitutes the entire agreement between the Parties.

## §11.0 / SIGNATURES

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**Client Representative:**

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**Client Organization:**

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**Date:**

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**Advisor Representative:**

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of GROUND & FORM ADVISORY LLC

**Date:**

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