

STATE OF TEXAS           §  
                                          §  
COUNTY OF DALLAS       §

**MASTER SERVICES AGREEMENT**

This Master Services Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018 (the “Effective Date”) by and between ORBYT Management, Inc. (“Consultant”) and the City of Coppell (“The City”). Consultant and The City are collectively referred to herein as the “Parties” and sometimes individually referred to herein as a “Party”.

**I. SCOPE OF SERVICES**

This Agreement shall act as a base agreement under which the Parties can enter into multiple specific transactions by executing a Statement of Work (“SOW”), a form of which is attached hereto as Exhibit A, or another form previously approved or accepted by an authorized representative of Consultant. Each SOW will describe the specific services Consultant will provide The City (“Services”). Revisions to a SOW may be made via mutually agreed upon Amendment (“Amendment”). This Agreement (including all exhibits), the individual SOW(s), and any related Amendment shall form a single integrated agreement between the Parties. Any conflict or inconsistency between the terms and conditions of this Agreement, a particular SOW and/or other Amendment shall be resolved in favor of the terms and conditions of the documents in the following Agreement: this Agreement first, the Amendment second, and the SOW third. The Parties agree that the sole purpose of any such SOW and/or Amendment or any other instrument furnished or utilized by Consultant or the City in connection with the Services is limited to describing specific Services to be performed and/or provided (including the applicable rate/compensations for such Services), and any other language or provision in any such instrument that purports to expand, limit, modify, waive, or otherwise define the rights or duties of the Parties shall be null and void *ab initio*, and shall not be binding on the Consultant or The City.

**II. TERM**

The term of this Agreement shall begin upon the Effective Date, and will continue in effect until \_\_\_\_\_, as provided herein, by either Party. SOW(s) shall be for a term or for specific Services as specified therein and shall continue in effect until completion of the Services or termination pursuant to Section [\_\_\_\_\_].

**III. THE CITY'S ACCEPTANCE OF TERMS**

The City’s acceptance of a SOW shall be accomplished by the earlier execution of the SOW.

**IV. DELIVERY OF SERVICES**

Time is of the essence for the performance of the parties’ obligations under this Agreement. The City will promptly approve of deliverables requiring approval according to the SOW and will not delay or withhold approval without reasonable cause. Consultant will deliver to The City Services that meet all specifications, standards, drawings, samples and requirements of The City, including,

without limitation, those described in the Agreement and those pertaining to quantity, scope and dates for delivery and performance (all such specifications and requirements, "Specifications").

The City may with Consultant's express written agreement, up to fifteen (15) days prior to delivery, change Specifications by providing Consultant with written notice, and, if a change increases the cost or time required for performance, the parties will equitably adjust this Agreement in writing accordingly.

## **V. THE CITY'S INSPECTION AND ACCEPTANCE**

The City may reject acceptance of any Services that do not meet all Specifications ("Non-conforming Services"), in which case, The City will have the rights set forth in Section 6(b). The City's use of or payment for any Services constitutes The City's acceptance of such Services.

## **VI. RETROACTIVE SERVICES**

The Consultant provided services before the Contract Date in anticipation of this Agreement. If the City accepts and approves the services provided before the Contract Date, the City will compensate the Consultant for those services in accordance with the terms of this Agreement and those services will fall under the terms of this Agreement.

## **VII. INVOICE**

Within fifteen (15) day of delivering services, Consultant will promptly invoice The City for Services delivered. Provided The City has received from Consultant an undisputed invoice (including the Agreement number) for such Services in a form acceptable to The City, The City will pay Consultant for such services within fifteen (15) days of receiving an undisputed invoice.

## **VIII. PRICE WARRANTY AND SETOFF**

The price on this Agreement is firm and is the total amount due from The City for Services (including, without limitation, any duties, taxes and other charges).

## **IX. REPRESENTATIONS AND WARRANTIES**

(a) Consultant represents and warrants to The City that:

(i) all Services will:

(A) conform to Specifications; and

(B) be diligently performed by Consultant or any of its employees, agents, independent contractors (including subcontractors) or suppliers (collectively, "Consultant Personnel") who are experienced and sufficiently skilled to perform Consultant's responsibilities under this Agreement, in accordance with the highest professional standards;

(ii) Consultant possesses the authority to execute, deliver and perform this Agreement;

(iii) Consultant's execution, delivery and performance of this Agreement, Services and

The City and its affiliates' use of Services will not:

- (A) violate any Applicable Laws or The City Policies (as defined in Section 8);
  - (B) violate any of Consultant's agreements with, or rights of, third parties;
  - (C) infringe or misappropriate any third-party intellectual property rights; or
  - (D) cause any injury or damage to any person or property (regardless of whether Consultant uses any equipment or materials provided or owned by The City).
- (b) Without affecting any of The City's other rights or remedies, in the event of a breach of this Section or any other representations or warranties, at The City's election, Consultant will promptly and at no additional cost to The City:
- (i) re-perform non-conforming Services, in accordance with The City's reasonable satisfaction within thirty (30) days of The City's request.
- (c) Consultant will pass through to The City (such that The City is a beneficiary of) any rights Consultant obtains under warranties and indemnities from any third-party contractors or suppliers in connection with any Services to the extent permitted by such contractors or suppliers.
- (d) No goods will be delivered pursuant to this Agreement.

## **X. LIMITATION ON CONSULTANT'S LIABILITY**

In no event shall Consultant be liable to The City or any other person or entity for anticipated profits or for special, punitive, exemplary, incidental or consequential damages arising out of or in connection with this transaction or any acts or omissions associated therewith or relating to the services provided, whether such claim is based on breach of warranty, contract, tort or other legal theory and regardless of the causes of such loss or demand or whether any other remedy provided herein falls. Consultant's liability for a claim of any kind for any loss or damage arising out of or in connection with or resulting from this Agreement, or from any breach, shall in no case exceed the total amount paid for services purchased under this Agreement.

## **XI. COMPLIANCE; EQUAL EMPLOYMENT OPPORTUNITY**

Consultant and the Services will comply with all federal, state and local laws and other official decrees of any governmental body, including, without limitation, the Foreign Corrupt Practices Act (collectively, "Applicable Laws"), as well as The City policies, as amended from time to time, including, without limitation, PepsiCo, Inc.'s Global Supplier Code of Conduct, available in its current form at [www.PepsiCo.com/SupplierCodeofConduct](http://www.PepsiCo.com/SupplierCodeofConduct); Raw Material Quality & Food Safety Policy; and Responsible & Sustainable Sourcing Strategy (such policies, collectively, "The City Policies").

Without limiting the generality of the foregoing, The City and Consultant will abide by the requirements of 41 CFR Sections 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or

individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin.

Moreover, these regulations require that The City and Consultant take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

## **XII. INDEMNIFICATION**

**THE CITY WILL DEFEND, INDEMNIFY AND HOLD HARMLESS CONSULTANT, ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND VENDORS FROM AND AGAINST ALL CLAIMS (EACH A "CLAIM") AND ALL LOSSES, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) RELATED TO, IN CONNECTION WITH OR ARISING OUT OF ANY ACT OR OMISSION BY THE CITY OR ANY THE CITY PERSONNEL. AT THE CITY'S EXPENSE, THE CITY WILL, UPON NOTICE FROM CONSULTANT, ASSUME THE DEFENSE OF A CLAIM. CONSULTANT MAY ELECT TO BE REPRESENTED BY, AND ACTIVELY PARTICIPATE THROUGH, ITS OWN COUNSEL WITH RESPECT TO ANY CLAIM. THE CITY WILL NOT SETTLE ANY CLAIM WITHOUT CONSULTANT'S PRIOR WRITTEN CONSENT, NOT TO BE UNREASONABLY WITHHELD. IF ANY JUDGMENT OR LIEN IS PLACED UPON OR OBTAINED AGAINST CONSULTANT'S PROPERTY AS A RESULT OF ANY CLAIM, THE CITY WILL DISSOLVE AND DISCHARGE, IF POSSIBLE, THE LIEN BY GIVING BOND OR OTHERWISE.**

## **XIII. INSURANCE**

Consultant will maintain insurance coverage sufficient to satisfy its obligations under this Agreement. Without limiting the generality of the foregoing, Consultant will secure and keep in force, at its sole cost and expense, the following types of insurance:

- (a) commercial general liability ("CGL") insurance on an occurrence basis (including coverage for premises, operations, broad form property damage, products/completed operations, independent contractors, contractual liability covering this Agreement as an "insured contract," independent contractors' liability, personal/advertising injury and work performed for Consultant by others) with limits of at least \$1,000,000 per occurrence for bodily injury and property damage; and
- (b) automobile liability insurance on an occurrence basis with limits of at least \$100,000 combined single limit for bodily injury and property damage, for all owned, non-owned, leased, hired or borrowed vehicles.

Upon request, Consultant will deliver to The City a certificate of insurance for all coverage required in this Section.

Consultant will provide The City prompt advance written notice if its insurer intends to cancel or materially alter such policies.

## **XIV. OWNERSHIP OF IP**

Any intellectual property created solely as a result of this Agreement ("IP") will be deemed Consultant's sole and exclusive property. The City expressly waives any rights of attribution, integrity and prior use that The City may have in the IP or any related works, and such waiver will apply to any and all uses of or changes to the IP and such related works. The City will perform, at Consultant's request and expense, any act (including, without limitation, executing any documents) for Consultant to fully enjoy and protect IP, with title vested in Consultant.

#### **XV. LICENSE**

Services may include intellectual property rights owned or licensed by Consultant or a third party ("Consultant's Materials"). As described in the SOW, Consultant hereby grants The City a limited, revocable, and nonexclusive license to use Consultant's Materials, including applicable software, to enable fully The City's use of Services as contemplated by this Agreement.

#### **XVI. CONFIDENTIALITY; PUBLICITY**

"Confidential Information" means (i) all non-public information of The City or its affiliates provided to Consultant or its representatives, in any form in connection with this Agreement; (ii) all Specifications or other documents prepared by Consultant in connection with this Agreement; and (iii) the fact that The City has contracted to purchase Services from Consultant and the terms and subject matter of this Agreement.

Without The City's prior written consent, Consultant will not, and will cause Consultant Personnel not to: (i) use Confidential Information for any purpose other than performing this Agreement; (ii) disclose or publicize Confidential Information; or (iii) use, refer to or distribute the name or trademarks of The City or its affiliates. The foregoing provisions will be subject to the terms of any other written agreement executed by the parties relating specifically to confidentiality or non-disclosure.

#### **XVII. CONSULTANT PERSONNEL; INDEPENDENT CONTRACTOR**

Consultant and Consultant Personnel are serving as independent contractors and not as The City's employees, regardless of where they perform Services or any other work. The City will not be responsible for directing or controlling the daily activities and performance of Consultant Personnel.

Consultant will (a) be fully responsible for Consultant Personnel, including, without limitation, all compensation and taxes related thereto and any Consultant Personnel acts or omissions and (b) carry on its work at its own risk until work is fully completed and accepted (under Section 4). Consultant will, and will cause Consultant Personnel to, take all safety precautions and furnish and install all safeguards necessary for the prevention of accidents related to this Agreement.

#### **XVIII. ASSIGNMENT; SUBCONTRACTING**

Consultant will not assign (including, without limitation, subcontract) any rights or duties under this Agreement, without The City's prior written consent. Consultant's engagement or contract with any subcontractor will not create any contractual relationship between any subcontractor and The City. Any attempted assignment or delegation in violation of this Section will be void.

## **XIX. MINORITY AND WOMEN'S BUSINESS ENTERPRISES**

Consultant will use reasonable good faith efforts to employ and develop minority-owned business enterprises ("MBE") and women-owned business enterprises ("WBE") in connection with Services and will provide The City with quarterly reports of all expenditures made by Consultant with MBE and WBE suppliers in connection with Services.

## **XX. NOTICES**

Billing, invoices, and reports required of Consultant hereunder shall be addressed to the individual designated as the point of contact on the particular SOW.

Notices and correspondences required of the Parties hereunder shall be addressed to:

If to Consultant:

**ORBYT Managemet, Inc.**  
**17330 Preston Road, Suite 200D, Dallas, Texas 75252**  
**Attention: Omar A. Benhalim, Chief Operating Officer**  
**Email: omar@diversitywealth.com**

**If to The City:**  
**The City of Coppel**  
**255 E. Parkway Blvd**  
**Coppel, Texas 75019**  
**Attention: Mike Land, City Manager**  
**Email: MLand@coppelltx.gov**

**Copy:**  
**Nichols, Jackson, Dillard, Hager & Smith, LLP**  
**500 N. Akard, Suite 1800**  
**Dallas, Texas 75201**  
**Attention: Robert E. Hager, City Attorney**  
**Email: Rhager@njdhs.com**

Any notice or correspondence provided for in this Agreement shall be duly given if delivered by (a) hand; (b) registered or certified mail, return receipt requested, postage pre-paid; or (c) email to the Party for which it is intended. The Parties may change their respective addresses hereunder upon reasonable advance notice to the other. Any notice, consent, endorsement, election, certification, report, request, demand, tender, authorization, or approval given by: (i) hand delivery or registered mail shall be deemed given at the time of delivery, and (ii) email transmission shall be deemed to be given at the time the transmission has been opened by the recipient; provided, however, that where the time of transmission falls outside normal business hours of the recipient, delivery shall be deemed to be given at 0900 hours (recipient's local time) on the next business day at the location of receipt.

## **XXI. FORCE MAJERE**

Neither party shall be liable for defaults due to acts of GOD or the public enemy, acts or demands of any government or any government agency, strikes, fires, floods, accidents, strikes, freight embargoes, or other unforeseeable causes beyond its control. Each party shall notify the other in writing of the cause of such delay within five (5) days after the beginning thereof.

## **XXII. TERMINATION**

In addition to other rights and without liability, either party may terminate this Agreement, or any part of this Agreement, including a party of a SOW, by providing the other party with written notice of termination under the following circumstances: (a) in the event the party fails to cure a breach of this Agreement within thirty (30) days after the other party or its affiliate provides written notice of such breach; (b) if either party becomes insolvent, is adjudicated bankrupt, files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors or seeks protection from creditors under any Applicable Laws; or (c) at any time for any or no reason upon thirty (30) day's prior written notice. Upon the termination of this Agreement, the party in violation will immediately stop and cause all its Personnel to stop all performance under this Agreement.

If the City terminates this Agreement and/or any SOWs, the City will pay the Consultant the reasonable value of Services rendered by the Consultant to the City up to the date of the Consultant's receipt of the written notice of termination. The reasonable value will be determined by following the Compensation Table of the applicable SOW.

## **XXIII. SURVIVAL; SEVERABILITY**

The termination of this Agreement will not affect the following provisions (which will survive such termination): (a) Sections 7–21; (b) the provisions of this Agreement that by their terms state or evidence the intent of the parties that the provision survives the termination of this Agreement; and (c) the provisions of this Agreement that must survive to give effect to the provisions of this Agreement. If one or more of the terms of the Agreement are deemed void or unenforceable by law, then all other provisions will continue in full force and effect.

## **XXIV. GOVERNING LAW; DISPUTE RESOLUTION**

This Agreement will be deemed a contract for the sale of goods under the Uniform Commercial Code and be governed and interpreted by the laws of the State of Texas. State and federal venue and jurisdiction for any action relating to this Agreement will rest exclusively in the county where The City's corporate headquarters is located.

Prior to attempting to resolve any dispute by litigation: (a) the parties will attempt to resolve all disputes promptly by negotiation between executives with authority to settle the dispute; and (b) if the dispute is not so resolved, the parties will attempt to settle the dispute by mediation in Dallas, TX. Consultant must commence any action against The City arising from this Agreement within five years from the date the claim accrues, after which any such claim not yet brought will be permanently barred.

## **XXV. ENTIRE AGREEMENT**

This Agreement, along with any documents attached to or incorporated into this Agreement, constitutes the entire agreement between the parties and replaces any contemporaneous oral or written communications between the parties related to the subject matter of this Agreement. Subject to Section 2, no term or condition of this Agreement may be changed or modified (including by the parties' course of dealing, performance or trade practices) except in a writing that refers specifically to this Agreement and is signed by the parties. Any waiver is effective only in that instance and does not operate as a waiver on any future occasion.

**By:**

\_\_\_\_\_  
\_\_\_\_\_

**Title: DiversityWealth, Tasnim  
Benhalim. Founder/Principal**

**By:**

\_\_\_\_\_  
\_\_\_\_\_

**Title: City of Coppel, Mike Land, City  
Manager**

Please sign above and return this document to **Omar Benhalim** at [Omar@DiversityWealth.com](mailto:Omar@DiversityWealth.com)