

Protiviti – Standard Master Agreement

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT, dated as of June 18, 2012, is by and between **PROTIVITI INC.**, a Delaware corporation (“**Protiviti**”), and Lexington Fayette Urban County Government (LFUCG) (“**Client**”).

WHEREAS, Protiviti is in the business of providing internal audit, risk assessment, staff augmentation and consulting services; and

WHEREAS, Client desires to engage Protiviti with respect to such services and may desire to engage Protiviti from time to time for additional services;

THEREFORE, the parties hereto agree as follows:

Agreement

This Master Services Agreement, including the terms and conditions set forth in Attachment I, all exhibits referenced herein and attached hereto, and each Statement of Work (as defined below) (collectively, the “**Agreement**”) represents the entire agreement between Protiviti and Client regarding the engagement to which a Statement of Work refers, supersedes all other oral, written or electronic communications between the parties concerning the subject matter thereof, and shall be binding on and inure to the benefit of the parties and their respective successors and permitted assigns. The term "hereunder" shall mean this entire Agreement as a whole unless reference to a specific section of this Agreement is made. In the event of conflict between any Statement of Work and this Agreement (excluding such Statement of Work), the terms set forth in this Agreement shall govern unless the parties specifically agree otherwise in such Statement of Work. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Statements of Work

All services that Protiviti shall provide under this Agreement shall be memorialized in a statement of work substantially in the form attached hereto as Exhibit A, which, when fully executed by both parties, shall be incorporated herein and become part of this Agreement as though fully set forth herein (each a “**Statement of Work**”). Each Statement of Work will include a description of Protiviti’s services (the “**Services**”), a summary of Protiviti’s approach, a list of the key tasks, a description of the Deliverables (as defined below), if any, a list of Client’s obligations, a description of the project staffing and the names of the engagement team leaders, fees for Services and the stipulated level of involvement by Client personnel. Client acknowledges that Protiviti’s work is highly dependent on the availability of Client’s personnel, Client’s contractors and other factors beyond the control of Protiviti. Protiviti will use commercially reasonable efforts to assist Client in meeting any stated deadlines but Client acknowledges that despite these efforts, due to, among other things, the factors noted above, any stated deadlines and timelines may not be met. Payment is due upon receipt of invoice. Should any invoice remain unpaid by Client for more than thirty (30) days, interest shall be paid at a rate equal to the lower of one and one-half percent (1.5%) per month or the highest rate permitted by applicable law.

“**Deliverables**” means literary works or other works of authorship (such as documentation, reports and similar works) that Protiviti is required to deliver to Client as part of the Services, in each case as specifically set forth in the Statement of Work as Deliverables. All Deliverables will be prepared solely for the use of Client’s management, employees and directors. The Deliverables may not be relied upon for any purpose by any third party without the prior written consent of Protiviti. Each party grants only the licenses and rights specified in this Agreement. No other rights or licenses (including, but not limited to, licenses or rights under patents) are granted either directly, by implication or otherwise.

PROTIVITI INC.

**LEXINGTON FAYETTE URBAN COUNTY
GOVERNMENT**

Protiviti – Standard Master Agreement

By: _____
Michael Thor
Managing Director

By: _____
Jim Gray
Mayor

Date:

Date:

Terms and Conditions to Master Services Agreement Dated as of June 18, 2012 Between LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT (“Client”) and PROTIVITI INC. (“Protiviti”)

1. **Client Responsibility.** Client acknowledges that the achievement of any policy, process, model, system or risk management practice depends not only on the design and implementation, but also on the quality, experience and continuity of personnel involved, the diligent ongoing execution of any such policy, process, model, system or risk management practice, and appropriate modifications as changing conditions warrant. Client understands and accepts responsibility for all decisions related to, and implementation and ongoing modification of, policies, processes, models, systems and risk management practice assessments, methods and assumptions, if any, developed in the course of the Statement of Work.

All Deliverables are based upon information made available by Client to Protiviti as of the date such Deliverables are provided to Client. Protiviti has no obligation to update any Deliverable.

2. **Responsibility for Internal Controls.** Client is solely responsible for establishing and maintaining its own effective internal control system, record keeping, management decision-making and other management functions. Client shall be fully and solely responsible for (i) applying independent business judgment with respect to the Services and the Deliverables, (ii) making any implementation decision related thereto, and (iii) determining further courses of action with respect to any matters addressed in any Deliverable or Service.
3. **Non-CPA Status.** Client understands that Protiviti is not a public accounting firm and does not issue opinions on financial statements or offer any attestation services.
4. **Authoritative Standards.** Client acknowledges that there is no authoritative standard against which risk management practices can be directly compared. In practice, methodologies and approaches to measuring, managing and controlling risk vary considerably. New and refined practices continue to evolve and the characterization of policies, procedures or models as sound, “industry standard” or “best” practices is judgmental and subjective.
5. **Confidential Information.** Each party (the “**Recipient**”) agrees to protect the Confidential Information of the other party (the “**Disclosing Party**”) in a manner consistent with the treatment that Recipient accords its own Confidential Information of a similar nature, and the Recipient agrees to use and reproduce Confidential Information only to perform its obligations under this Agreement or for its internal collection, analysis and training purposes. The Recipient may disclose Confidential Information to its employees, agents, and subcontractors, who have a need to know, and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. Confidential Information is any information which is identified by the Disclosing Party at the time of disclosure as being of a confidential nature (including, but not limited to, business plans, products, trade secret processes or methodologies, software, documentation, design specifications, other technical documents and other proprietary rights or information) or that is disclosed to the Recipient under circumstances that would lead a reasonable person to understand that such information is confidential or proprietary in nature. Confidential Information does not include information that (i) is or becomes generally available to the public without breach by Recipient of its confidentiality obligations under this Agreement, (ii) is received by Recipient from a third party without restriction against disclosure, (iii) was known to Recipient without restriction prior to disclosure, (iv) is independently developed by Recipient without subsequent use of Disclosing Party’s Confidential Information, (v) or is otherwise not exempted from disclosure or provided in response to a request under the applicable State of Kentucky public records act. If Recipient becomes legally compelled (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand

or similar process) to disclose any of the Confidential Information, Recipient shall (to the extent legally permitted) provide Disclosing Party with prompt prior written notice of such requirement so that discloser may seek a protective order or other appropriate remedy.

6. **Distribution of Deliverables.** Deliverables or other documents or materials that are provided by Protiviti that are Protiviti-branded or marked as being authored by Protiviti, or Deliverables or other documents or materials that, based on the circumstances, context or any related communications, would lead a reasonable reader to understand that Protiviti produced, authored or contributed to such Deliverables, documents or materials (collectively, "**Branded Deliverables**") are for the use and benefit of Client only and not for any other party (each a "**Third Party**"), including, but not limited to, Client's affiliates, shareholders, business partners, contractors or advisors. If Client desires to disclose Branded Deliverables, or make reference to Protiviti, to any Third Party (other than Client's legal counsel and external auditors who need access to such information and who have agreed to keep such information confidential), except as otherwise required by the applicable public records act, Client will obtain Protiviti's prior written approval and, if requested by Protiviti, obtain from such Third Party a non-disclosure agreement and release in a form satisfactory to Protiviti. Protiviti accepts no liability or responsibility to any Third Party who benefits from or uses the Services or gains access to any Deliverables, including, but not limited to, Branded Deliverables. Notwithstanding the foregoing, Client may disclose and distribute Deliverables if, and solely to the extent that, disclosure is required by the applicable public records act and Client receives a request for such disclosure; provided, that Client provides Protiviti with prior written notice of such intended disclosure in sufficient time to allow Protiviti to seek confidential treatment of such information.
7. **No Third-Party Beneficiaries.** This Agreement has been entered into solely between Client and Protiviti, and no third-party beneficiaries are created hereby.
8. **Responsibility for Information.** Protiviti shall be entitled to rely on all information provided by, and the decisions and approvals of, Client in connection with Protiviti's work hereunder. Client hereby releases Protiviti and its personnel from any liability and costs relating to the Services to the extent that such liability and costs are attributable to any information provided, or decisions or approvals made, by Client personnel that were not complete, accurate or current.
9. **Services.** Changes to any Services must be agreed upon by Protiviti and Client and will not be considered effective unless and until both parties agree in writing to an amendment to the applicable Statement of Work.
10. **Indemnification.** To the extent permitted by law, Protiviti and Client shall indemnify, defend and hold harmless the other party for any losses for bodily injury or damages to real property resulting directly from the indemnifying party's negligence or willful misconduct. Nothing contained herein is intended to be and shall not be a waiver for any defense, including that of sovereign immunity, that either party may have as to any third party.
11. **Limitation of Liability.** Notwithstanding anything to the contrary in this Agreement, Client and Protiviti agree that, regardless of the legal theory asserted (including, but not limited to, breach of contract, warranty, negligence or tort) neither party shall be liable to the other party or any person asserting claims on behalf of or in the name of the other party for consequential, indirect, incidental, punitive or special damages of any nature suffered by Client or Protiviti (including, but not limited to, lost profits or business opportunity costs), even if the parties have been advised of the possibility of such damages, provided that this subsection shall not apply to any indemnification obligations under the Agreement.
12. **Engagement Team Restrictions.** If for any reason any of the employees or subcontractors designated in the applicable Statement of Work is not able to complete this engagement, Protiviti will

provide employees or subcontractors with similar qualifications and experience to complete the assignment.

13. **Workspace.** Client shall provide reasonable workspace for Protiviti personnel at its work sites, as well as occasional administrative support services related to the Services. Client shall provide Protiviti personnel with any necessary safety orientation and security access for work on Client's premises.
14. **Publicity.** Neither party shall use the name of the other party, in part or whole, or any of their trademarks or trade names without the other party's prior written approval in a manner inconsistent with the purpose of this Agreement. Notwithstanding the foregoing Client consents to Protiviti's use of Client's name and a general description of the Services to be performed by Protiviti under this Agreement in resumes and proposals.
15. **Proprietary Rights in Deliverables and Data.** Subject to the terms of this Agreement, including Section 6 (Distribution of Deliverables) and Client's fulfillment of all payment obligations hereunder, Protiviti agrees that Client shall own the copyright in the Deliverables, excluding any Protiviti Proprietary Materials (as defined below) and any third-party software that is incorporated into the Deliverables. Client acknowledges that as part of performing Services, Protiviti may utilize proprietary copyrights, patents, trade secrets, software, ideas, concepts, know-how, tools, models, processes, methodologies and techniques (including any derivatives, enhancements or modifications thereto) which have been originated or developed by Protiviti, or which have been purchased by, or licensed to, Protiviti (collectively, "**Protiviti Proprietary Materials**"). Client agrees that Protiviti retains all right, title, and interest in the Protiviti Proprietary Materials. Subject to the terms of this Agreement, including Section 6 (Distribution of Deliverables) and Client's fulfillment of all payment obligations hereunder, Protiviti grants and Client accepts a nonexclusive, nontransferable license to use the Protiviti Proprietary Materials solely to the extent necessary to make use of the Deliverables as contemplated by the applicable Statement of Work.
16. **Termination of Agreement.** Either party may at any time and without cause terminate this Agreement by providing 30 days' prior written notice of termination to the other party. If Protiviti terminates without cause prior to completion of project and delivery of deliverables, Protiviti shall not be entitled to compensation for services provided prior to termination. The rights and obligations set forth in Sections 5, 6, 8, 9, 10, 11, 14, 15, and 16 shall survive termination of this Agreement. After conclusion of the work contemplated in a Statement of Work or the termination or expiration of a Statement of Work (a "**Prior SOW**"), for so long as Client and Protiviti are actively negotiating a new Statement of Work for Protiviti's provision of additional Services to Client that are substantially similar to those provided under the Prior SOW, the provisions of this Agreement and the Prior SOW, including any payment terms, shall apply to such Services provided by Protiviti prior to the finalization of such new Statement of Work.
17. **Governing Law.** This Agreement and the rights and duties of the parties hereunder shall be governed by, and construed in accordance with, the laws of the State of Kentucky without regard to its conflict of laws provisions.
18. **Notice.** All notices or other communications required to be sent to either party shall be in writing and sent by first class mail, postage prepaid, by next-day courier or by facsimile, to the attention of the person identified below, at the address shown below or to the facsimile number shown below. Either party may change such person, address or facsimile number by written notice to the other party. Notice shall be effective on the fifth (5th) business day after mailing, on the first (1st) day after the date of sending via next-day courier, or on the date of transmission if sent by facsimile (provided that notice shall be effective on the first (1st) business day following the date of transmission if transmission is effected on a non-business day).

Protiviti: Protiviti Inc.
Attn: Michael Thor
Managing Director
210 east Fifth Street
Suite 2000
Cincinnati, OH 45202-4152
Facsimile: 312.476.6582

cc: Protiviti Inc.
Attn: Legal Department
50 California Street, 17th Floor
San Francisco, CA 94111

Client: Lexington-Fayette Urban County Government
Attn: Bruce Sahli, Internal Audit
200 East Main Street
Lexington, KY 40507-1315
Fax: (859) 425-2059

19. **Assignment.** Neither Protiviti nor Client may assign this Agreement, by operation of law or otherwise, without the prior written consent of the other party. Any assignment in violation of this provision shall be deemed to be null and void.
20. **Business Practices.** Both parties agree to comply with all applicable equal employment opportunity laws, including, but not limited to, Title VII of the 1964 Civil Rights Act, the Civil Rights Act of 1991, the Americans with Disabilities Act, the affirmative action requirements of Executive Order 11246, the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended.
21. **Force Majeure.** Neither party shall be liable for any default or delay in the performance of its obligations (except for payment obligations) under this Agreement if such default or delay is caused by an act of God or other circumstance outside the reasonable control of the party, including, but not limited to, fire, flood, earthquake, natural disasters or other acts of God, terrorist acts, riots, civil disorders, freight embargoes, government action, or the like.
22. **Severability.** If any term of the Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from the Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.
23. **Waiver.** No waiver shall be deemed to have been made by either party unless it is expressed in writing and signed by the waiving party. The failure of either party to insist in any one or more instances upon strict performance of any of the terms of provisions of this Agreement, or to exercise any option or election herein contained, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, and no waiver by either party of any one or more of its rights or remedies under this Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedies hereunder or at law.
24. **Headings and Interpretation.** The section headings in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of the Agreement. All parties hereto have participated substantially in the negotiation and drafting of this Agreement and each party hereby disclaims any defense or assertion that any ambiguity herein should be construed against the drafter of the Agreement.
25. **Regulatory Compliance.** Client acknowledges and agrees that it is responsible for its own legal representation and guidance related to the Services or Deliverables, and that it will consult its own

legal resources before acting upon any Services or Deliverables. Client further acknowledges and agrees that Protiviti is not a law firm and is not providing legal advice or analysis and that Protiviti has not engaged legal counsel with respect to the Services or Deliverables.

26. Non-Public Personally Identifiable Information. In providing Services to Client, Protiviti may have access to certain proprietary information owned by Client and not generally available to the public; this information may include Non-Public Personal Information (“**NPPI**”) of Client’s customers as that term is defined in The Gramm-Leach-Bliley Act. Protiviti is authorized to use this NPPI solely in conjunction with the Services provided to Client. Protiviti, its employees and agents will not disclose any NPPI to any outside party without Client’s consent unless compelled by subpoena or other validly issued administrative or judicial request. As between the parties, the NPPI is the sole property of Client and Protiviti agrees that, upon request of Client, it will return or destroy all NPPI, unless otherwise required by law or regulation to maintain such information. If requested by Client, Protiviti shall cooperate with Client in evaluating the security measures that Client requires Protiviti have in place for the protection of NPPI. If Client requests additional security measures and Protiviti cannot for any reason meet such security measures for the engagement contemplated hereby, Protiviti shall notify Client and Client may, as its sole remedy, terminate this Agreement without cause upon written notice to Protiviti.

STATEMENT OF WORK***Check one***

Project **Staff Augmentation**

This is a Statement of Work referred to in the Master Services Agreement (the "**Agreement**") dated _____, 201_, by and between _____ ("**Client**") and Protiviti Inc. ("**Protiviti**"). This Statement of Work shall be effective immediately after it is signed by both parties.

1. Engagement Team Leaders and Project Staffing:

Upon establishing and confirming the project schedule and specific requirements of Protiviti resources with [**Insert Name of Client Sponsor**], Client's project sponsor, Protiviti will require at least two weeks' notice prior to the effective date of any modification to the Protiviti personnel schedules. In the event of a schedule change imposed by Client that occurs less than two weeks prior to the date Protiviti resources are scheduled to be deployed, Client may be subject to a redeployment fee to compensate Protiviti for the amount of hours dropped or delayed from the schedule at the rate of 75% of the applicable hourly rate if Protiviti is unable to redeploy the resource(s) to another client engagement.

2. Client's Project Manager and Additional Client Contacts: _____

3. Name of Project: _____

4. Project Description:

- Protiviti's Approach
- Key Tasks
- Client's Responsibilities

5. Start Date: _____

6. Estimated End Date: _____ unless otherwise modified or terminated in accordance with the terms of the Agreement.

7. Special Conditions: _____

Release; Use of Certain Automated Tools. Client understands and agrees that Protiviti's testing procedures and the tools that Protiviti uses, including security assessment tools and/ or security software solutions and other automated tools, are designed to detect possible weaknesses in network security controls. Client understands and acknowledges, however, that Protiviti cannot provide assurance that these tools or any other procedures that Protiviti might apply will identify all possible vulnerabilities. There is a possibility that the tools referenced above may, because of certain attributes of Client's software, inadvertently impact Client's network performance or Client's software configuration or data. Client agrees not to hold Protiviti responsible or liable for any adverse effects relating to the use of such tools.

8. Fees:

In addition to professional fees and out-of-pocket expenses incurred, a 2% charge for technology and knowledge capital usage (applied to professional fees) will be billed to Client. A detailed schedule of expenses will be provided with each invoice

9. Deliverables:

10. Address for notice (if different or additional to those set forth above):

Executed this _____ day of _____, 201_.

All of the terms, covenants and conditions set forth in the Agreement are incorporated herein by reference as if the same had been set forth herein in full.

PROTIVITI INC.

INSERT FULL NAME OF CLIENT

By: _____ By: _____
Insert Name of Managing Director **Insert Name of Addressee**
Managing Director **Insert Title of Addressee**