

Master Services Agreement

This Master Services Agreement the ("Agreement"), effective July 21, 2022 ("Effective Date"), is entered into by and between **Pacific Northwest Baking Company** the ("Customer"), having a principal place of business at **1307 Puyallup Street, Sumner, Washington 98390, United States**, and **Potrero Labs, Inc.**, the ("Company"). This Agreement defines the relationship between both the Customer and the Company to provide certain service and deliverables in support of your company's and its affiliates business.

1. DEFINITIONS

- 1.1 **"Affiliate"** means a legal entity that controls, is controlled by, or is under common control with a party, where "control" is defined as owning more than 50% of the voting shares of such entity.
- 1.2 **"Agreement"** means this Master Services Agreement and the applicable Order Form.
- 1.3 **"Authorized User"** means an employee or contractor of Customer or its Affiliates that Customer has registered to access and use the Master Services.
- 1.4 **"Customer Data"** means certain data and information input or uploaded into the Master Services by Customer or Authorized Users.
- 1.5 **"Master Services"** means the cloud-based web platform delivered and accessible through the Site that provides contract management and workflow-related services and the services performed by Company to configure and rollout the Master Services to Customer and Authorized Users, as described in an applicable Order Form.
- 1.6 **"Order Form"** means the document that Customer uses to order the Service, once signed by both Customer and Company.
- 1.7 **"Intellectual Property Rights"** means patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, moral rights, know-how, and any other intellectual property rights recognized in any country or jurisdiction.

2. MASTER SERVICES

- 2.1 **Master Services.** Customer and its Authorized Users may access and use the Master Services solely for Customer's internal business purposes as set forth in the applicable Order Form.
- 2.2 **Cooperation and Assistance.** Customer shall cooperate with Company in good faith and make available such information and personnel as may be reasonably required by Company in order to provide the Master Services. Customer shall be responsible for acquiring and maintaining all third-party software and services required to access, use, or integrate with the Master Services, including all costs related to the foregoing.
- 2.3 **Authorized Users.** Customer shall have all Authorized Users comply with the terms of this Agreement. Customer will be responsible for all actions taken under an Authorized User's account. Customer will comply with all applicable laws, rules and regulations in connection with its use of the Master Services under the Agreement. Customer shall promptly notify Company of any suspected violation of this Agreement by an Authorized User and shall cooperate with Company to address the suspected violation. Company may suspend or terminate any Authorized User's access to the Master Services upon notice to Customer in the event that Company reasonably determines that such Authorized User violated this Agreement.
- 2.4 **Restrictions.** Customer shall not and shall ensure that its Authorized Users shall not attempt to interfere with or disrupt the Master Services or any related systems or networks or use the Master Services other than directly for Customer's benefit. Customer shall not allow access to or use of the Master Services by anyone other than Authorized Users. Customer shall not and shall ensure that its Authorized Users shall not: (i) copy, modify or distribute any portion of the Master Services; (ii) rent, lease, or resell the Master Services; or (iii) transfer any of its rights hereunder. In addition, Customer

shall not reverse-engineer or access the Master Service in order to build a competitive product or service.

- 2.5 **Customer Data.** Customer is responsible for obtaining any necessary right and licenses for use of the Customer Data in connection with this Agreement. Customer represents and warrants that it has the legal right and authority to access, use and disclose to Company any Customer Data. The parties shall use commercially reasonable efforts to limit use of the Customer Data except as necessary under this Agreement and will not disclose Customer Data to any third party except to those of its employees and subcontractors who have a business need to know such Customer Data; provided that each such employee and subcontractor is bound to restrictions consistent with the terms set forth in this Agreement. Each party will protect the Customer Data from unauthorized use and disclosure using commercially reasonable efforts. The Master Services includes functionality that permits Customer to download Customer Data as an archive file consisting of individual files in an industry standard data file format. In the event that any Customer Data is lost or corrupted, Company will use commercially reasonable efforts to restore such Customer Data. COMPANY'S EFFORTS TO RESTORE LOST OR CORRUPTED CUSTOMER DATA PURSUANT TO THIS SECTION SHALL CONSTITUTE COMPANY'S SOLE AND EXCLUSIVE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY LOSS OR CORRUPTION OF CUSTOMER DATA. Customer shall use commercially reasonable efforts to maintain back-up copies of its then current Customer Data. Company and its agents will only access, use, and process Customer Data to provide the Master Services and to fulfill Company's obligations under the Agreement. Company shall keep and maintain Customer Data consistent with its Data Processing Addendum, which is hereby incorporated by reference and, upon advance notice to Customer, may be updated from time to time.
- 2.6 **Usage Data.** Company may collect and analyze data and other information relating to the provision, use and performance of the Master Services and related systems and technologies, which may include Customer Data, and data derived therefrom ("**Usage Data**") in order to improve and enhance the Master Services. Insights drawn from Usage Data may be disclosed to Customer and other users of the Master Services in connection with their respective use of the Master Services. For clarification, Usage Data is anonymized and will not identify Customer or a Customer's users, and will not be disclosed in a manner that would permit a third party to determine Customer's or Customer's users' identity.
- 2.7 **New Provision.**

3. FEES; EXPENSES; TAXES

- 3.1 **Fees.** Customer shall pay to Company the Fees in accordance with the terms set forth in any Order Form and this Section 3.
- 3.2 **Invoices; Payment.** Unless otherwise set forth in an Order Form, Company shall invoice Customer annually in advance for the Service. Each invoice shall be due and payable Net 30 of receipt by Customer. All payment obligations are non-cancellable, and other than as provided in the Agreement, all amounts paid are non-refundable. Company shall be entitled, in its sole discretion, to withhold performance and discontinue Customer's access to the Master Services until all amounts past due are paid in full.
- 3.3 **Taxes.** All Fees and other amounts stated or referred to in this Agreement are exclusive of all taxes, duties, levies, tariffs, and other governmental charges (collectively, "Taxes"). Customer shall be responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made hereunder, other than any taxes based on Company's net income.

4. PROPRIETARY RIGHTS.

Customer shall own (i) the Customer Data and (ii) Customer's name, logo and other trademarks, and (iii) all Intellectual Property Rights in and to any of the foregoing.

Company shall own: (i) the Master Services, and all improvements, enhancements or modifications made by any party; (ii) any software, applications, inventions or other technology developed by

Company in connection with providing the Master Services; (iii) Company's name, logo, and other trademarks; and (iv) all Intellectual Property Rights in and to any of the foregoing.

Each party shall take all actions necessary to vest rights consistent with the terms of this Section.

5. CONFIDENTIALITY

- 5.1 **Definition.** "Confidential Information" means any business or technical information disclosed by one party to the other party that is other than Customer Data and: (i) if disclosed in writing, is marked "confidential" or "proprietary" at the time of disclosure; (ii) if disclosed orally, is identified as "confidential" or "proprietary" at the time of disclosure; or (iii) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary.
- 5.2 **Exclusions.** The obligations and restrictions set forth in Section 5.3 will not apply to any information that: (i) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (ii) is rightfully known by the receiving party at the time of disclosure; (iii) is independently developed by the receiving party without access to the disclosing party's Confidential Information; or (iv) the receiving party rightfully obtains from a third party who has the right to disclose such information without breach of any confidentiality obligation to the disclosing party.
- 5.3 **Use and Nondisclosure.** A receiving party will not use the disclosing party's Confidential Information except as necessary under this Agreement and will not disclose Confidential Information to any third party except to those of its employees and subcontractors who have a business need to know such Confidential Information; provided that each such employee and subcontractor is bound to confidentiality restrictions consistent with the terms set forth in this Agreement. Each receiving party will protect the disclosing party's Confidential Information from unauthorized use and disclosure using efforts equivalent to the efforts that the receiving Party uses with respect to its own confidential information and in no event less than a reasonable standard of care. The provisions of this Section 5.3 will remain in effect during the Term and for a period of three (3) years after the expiration or termination thereof, except with regard to trade secrets of the disclosing party, which shall be held in confidence for as long as such information remains a trade secret.
- 5.4 **Permitted Disclosures.** The provisions of this Section 5 will not restrict either party from disclosing the other party's Confidential Information: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided that to the extent legally permitted, the party required to make such a disclosure gives reasonable notice to the other party to enable it to contest such order or requirement or limit the scope of such request; (ii) on a confidential basis to its legal or professional financial advisors; (iii) as required under applicable securities regulations.

6. WARRANTY

- 6.1 **Warranty for Master Services.** Company warrants solely to Customer that the Master Services will materially conform to the description set forth in the Order Form under normal use and circumstances as used consistent with the terms of this Agreement. As Company's sole and exclusive liability and Customer's sole and exclusive remedy for any breach of the warranty set forth in this Section 6.1 Company will use commercially reasonable efforts to modify the Master Services to correct the non-conformity.
- 6.2 **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6.1, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT OR THE MASTER SERVICES AND COMPANY HEREBY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. COMPANY DISCLAIMS ANY WARRANTY THAT THE MASTER SERVICES WILL BE ERROR FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM COMPANY OR ELSEWHERE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. Customer assumes sole responsibility and liability for results obtained from the use of the Master Services and for conclusions drawn from such use. Company shall

7. TERM AND TERMINATION

- ## 8. INDEMNIFICATION

- [illegible]

party. Customer's obligations under this **Section 8.5** are contingent upon: (i) Company providing Customer with prompt written notice of such claim; (ii) Company providing reasonable cooperation to Customer, at Customer's expense, in the defense and settlement of such claim; and (iii) Customer having sole authority to defend or settle such claim, provided that it may not settle any claim in a manner that imposes any material liability upon Company.

9. LIMITATION OF LIABILITY.


- 9.1 Exclusion of Damages.** To the fullest extent permitted by law, except for the indemnification obligations set forth in **Section 8**, or damages resulting from a party's disclosure of Confidential Information in violation of **Section 5**, neither Customer nor Company, and its Affiliates and suppliers, will be liable under this **Agreement** for (i) indirect, special, incidental, consequential, exemplary, or punitive damages, or (ii) loss of use, data, business, revenues, or profits (in each case whether direct or indirect), even if the party knew or should have known that such damages were possible and even if a remedy fails of its essential purpose.
- 9.2 Total Liability.** To the fullest extent permitted by law, except for the indemnification obligations set forth in **Section 8**, or damages resulting from a party's disclosure of Confidential Information in violation of **Section 5**, neither party's aggregate liability under this Agreement will exceed the greater of \$100,000 or the amount paid by Customer to Company during the twelve months prior to the event giving rise to liability.

10. GENERAL

- 10.1 Governing Law.** This Agreement shall be governed by the laws of the **State of New York** without regard to its conflict of law provisions. Any legal action or proceeding relating to this Agreement shall be brought exclusively in the state or federal courts located in New York, NY. Company and Customer hereby agree to submit to the jurisdiction of, and agree that venue is proper in those courts in any such legal action or proceeding.
- 10.2 Order of Preference.** In the event of a conflict between the Master Services Agreement and Order Form, the order of preference shall be the Master Services Agreement, then the Order Form, unless the Additional Terms section of the Order Form clearly specifies the section of the Master Services Agreement to be modified.
- 10.3 Waiver.** The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. No waiver of any provision of this Agreement will be effective unless it is in writing and signed by the party granting the waiver.
- 10.4 Notices.** Notices shall be sent to the addresses set forth in the Order Form. The notices shall be deemed to have been given upon: (i) the date actually delivered in person; (ii) the day after the date sent by overnight courier; or (iii) three (3) days following the date such notice was mailed by first class mail, or, if sent by email to legal@companyapp.com are deemed given when sent.
- 10.5 Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.
- 10.6 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 owed) on account of events beyond the reasonable control of such party, which may include without limitation denial-of-service attacks, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes and material shortages, internet connectivity.
- 10.7 Relationship Between the Parties.** Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties.
- 10.8 Assignment.** Neither Party may assign its rights or obligations under this Agreement without the other Party's prior written consent. Notwithstanding the foregoing, Company may assign its rights and

IN WITNESS WHERE OF, the parties hereto have executed this Agreement by its duly authorized representative intending to be bound as of the Effective Date.

Pacific Nothwest Baking Company


Signature: 

Name:
Shane Rogers

Title: Purchasing Manager

Date: 07 / 06 / 2022

Potrero Labs, Inc.

Signature: 

Name: James Honsa

Title: Chief Beep Boop Officer

Date: June 9, 2022