

# Master Services Agreement

This Master Services Agreement is made effective as of April 21, 2020 between Florida Housing Finance Corporation, with offices at 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301 (the Client) and Atlantic Data Security, LLC (Atlantic), with its principal office at 330 Roberts Street, Suite 301, East Hartford, CT 06108.

This Agreement, in and of itself, shall not constitute an obligation to acquire or provide services. The terms of this Agreement are binding only upon execution by both parties of a Statement of Work for services.

## 1. DEFINITIONS.

**1.1. "Statement of Work"** shall mean the detailed description of the services ("**Services**") to be provided by Atlantic to the Client as executed by the parties and made part of this Agreement.

**1.2. "Intellectual Property Rights"** shall mean all forms of intellectual property rights and protections that may be obtained including, without limitation, all right, title and interest in and to all foreign, federal, state and common law rights relating to: (i) issued patents and all filed, pending or potential applications for patents, including any reissue, reexamination, division, continuation or continuation-in-part applications now or hereafter filed; (ii) trade secret rights and equivalent rights; (iii) copyrights, and other literary property and authors rights, whether or not protected by copyright; and (iv) trademarks, trade names, symbols, logos, brand names and other proprietary indicia.

## 2. SERVICES.

**2.1. General.** Subject to the terms and conditions of this Agreement, during the Term, Atlantic shall provide to Client the Services set forth in the applicable Statement of Work. If any of the terms of the Statement of Work conflict with the terms of this Agreement, the terms of the Statement of Work shall control.

**2.2. Statement of Work Changes.** Modifications to Services in a Statement of Work shall be set forth in writing, identifying any changes to the fees and time schedule associated with the modification and such modifications shall be implemented only upon a mutual written agreement of the parties.

**2.3. Reliance.** Unless specified otherwise in any Statement of Work, Atlantic shall be entitled to rely, without verification or investigation, upon any and all instructions, guidelines, information or materials provided or made available by Client.

**2.4. Method of Performing Services.** Atlantic, in conjunction with its personnel, will determine the method, details, and means of performing services for Client. Client acknowledges and understands that the services may include simulated, attempted and/or actual security breaches to Client's computer system.

**2.5. Non-Exclusivity.** Nothing in this Agreement shall be construed or interpreted so as to prohibit Atlantic from entering into similar agreements with other parties concerning similar Services.

**2.6. Maintenance Updates.** From time to time, Atlantic may provide Client with a maintenance update to any of the Services. All warranties, indemnification obligations and duties of Atlantic are conditioned upon Client's acceptance and installation of all maintenance updates supplied by Atlantic.

## 3. COMPENSATION.

**3.1. Fees and Expenses.** In consideration of the Services to be provided by Atlantic to Client, Client shall pay to Atlantic, or Atlantic's designated representative, the fees and reasonable out of pocket expenses incident to the performance of the Services set forth in the applicable Statement of Work.

**3.2. Invoices.** Atlantic shall submit invoices for Services to Client on a frequency set forth in a Statement of Work. Any undisputed amount remaining unpaid after the date due shall accrue interest at a rate equal to the lesser of (a) one and one half percent (1.5%) or (b) the highest rate allowed by law. Invoices submitted by Atlantic to Client shall be paid by Client on a Net 30 basis in USD and be deemed accurate and fully payable unless disputed in writing by Client within ten (10) days of Client's receipt of the invoice.

**3.3. Taxes.** Client shall pay any and all applicable federal, state and local taxes that may apply to the Services, except for any tax based on Atlantic net income or withholding taxes associated with Atlantic employees.

**4. OWNERSHIP.** Anything to the contrary notwithstanding, all methodologies, procedures, management tools, workshops, manuals, software, data files, concepts, ideas, inventions, know-how and other intellectual property Atlantic has developed, created or acquired prior to or during the performance of the Services ("**Atlantic's Intellectual Property**") are, and shall remain, the sole and exclusive property of Atlantic. Client shall not have or acquire any right, claim, title or interest in or to any of Atlantic's Intellectual Property. Subject to the foregoing and upon payment in full of all amounts due to Atlantic, all information, materials, reports and other work product that Atlantic creates or develops specifically for Client as part of the Services ("**Work Product**") shall be owned by Client. Subject to payment in full of all amounts due Atlantic, Client will have a right to use, distribute, copy and create derivative works from the Services created and delivered to Client as a result of the Statement of Work solely for Client's own internal use. The parties further agree that Client may discuss with third parties the results of the Services or contents of any deliverables, although Client agrees not to distribute the deliverables or derivative works therefrom to third parties without the advance written approval of Atlantic; provided, however, that if Client elects to distribute the deliverables or derivative works therefrom to a third party without the advance written approval of Atlantic, Client hereby indemnifies, holds harmless and defends Atlantic from and against any all third party suits, actions, damages, costs, losses or expenses (including reasonable attorney's fees) relating to or arising out of such disclosure. Client acknowledges that Atlantic may (a) retain archival copies of any and all derivative works or Work Product and (b) may use and disclose general statistics and non-Client identifiable information regarding vulnerabilities and security issues but only if the identity of the Client is not disclosed and cannot be reasonably ascertained or inferred. Upon the request of the other party, each party shall take such actions, and shall cause its personnel to take such actions, including execution and delivery of all documents, as may be appropriate or desirable to confirm such rights.

**5. CONFIDENTIALITY/CONFIDENTIAL MATERIALS.** Each party may provide to the other, and each party may come into possession of information relating to the other party's business, which is considered confidential (the "Confidential Information"). To the extent allowable under Ch. 119, Fla. Stat., Confidential Information shall include, without limitation, all Work Product, all of Atlantic's Intellectual Property, all information marked confidential, all trade secrets of the parties (as defined under the applicable state trade secret law), and all information relating to each party's business plans and operations, products, costs, marketing statistics, all Client information, statistics, reports, data, lists, security assessments and analysis, future plans, business affairs, process information, technical information, finances, marketing plans, and pricing strategy. Notwithstanding the foregoing, the term Confidential Information shall not include information that (a) is publicly known at the time of its disclosure, (b) is lawfully received by the receiving party from a third party not under an obligation of confidentiality to the disclosing party, (c) is published or otherwise made known to the public by the disclosing party, or (d) was generated independently by the receiving party before disclosure by the disclosing party.

**5.1. Restrictions.** Neither party shall disclose any of the other party's Confidential Information to any person, or permit any person to use, examine or reproduce Confidential Information without the prior written consent of the other party, unless such Confidential Information has become public knowledge through means other than breach of this Agreement, or unless disclosure is required by a valid subpoena, court order or applicable law. Each party shall exercise at least the same degree of care to protect the confidentiality of the other party's Confidential Information, which it exercises to protect the confidentiality of its own similar confidential information, but in no event less than reasonable care. As long as a party meets this standard of care, that party shall have no additional obligations or liability regarding confidentiality.

**5.2. Limited Rights of Disclosure.** Anything to the contrary notwithstanding, Atlantic may, without the prior specific written authorization of Client, (a) disclose and make available Client's Confidential Materials, on a confidential and restricted basis, to its employees and independent contractors who have a reasonable need to know or have access to such information and materials in connection with the Services, and (b) use Client's Confidential Materials for any proper purpose related to the Services.

**5.3. Notice of Breach.** Each party will immediately notify the other party of any theft or unauthorized disclosure, reproduction or use of any Confidential Information, or any part of such information, of which such party has knowledge. The notice shall include the name, title, and business address of any person, whether or not employed by the notifying party whom such party reasonably believes has unauthorized possession of or made unauthorized disclosure, reproduction or use of Confidential Information and a detailed description of the Confidential Information at issue and the factual circumstances surrounding the unauthorized disclosure, theft or loss.

**6. INJUNCTIVE RELIEF.** Each party acknowledges that any violation of the provisions of Section 5 may result in irreparable harm to the other party and that such other party may have no adequate remedy at law. The parties agree that each party shall have the right to seek equitable relief by the way of injunction to restrain such violation and to such further relief it may be entitled at law or in equity.

**7. WARRANTIES.**

**7.1. Atlantic.** Atlantic represents and warrants that the Services provided hereunder shall be performed in a professional and workmanlike manner. For a breach of Atlantic's responsibilities related to the performance of Services, Client's sole and exclusive remedy and Atlantic's entire liability shall be the re-performance of any defective or non-conforming Service, provided that Client notifies Atlantic in writing within 30 days of such defect or non-conformity. EXCEPT AS STATED IN THIS AGREEMENT OR ANY STATEMENT OF WORK, ATLANTIC DATA SECURITY, LLC DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE AND NON-INFRINGEMENT. ATLANTIC DOES NOT WARRANT THAT THE SERVICES WILL DETECT ALL VULNERABILITIES OR WILL BE ERROR FREE, THAT ALL DEFICIENCIES, ERRORS, DEFECTS OR NONCONFORMITIES WILL BE CORRECTED, OR THAT THE SERVICES WILL MEET ANYTHING OTHER THAN CLIENT'S SPECIFIC REQUIREMENTS DEFINED WITHIN A STATEMENT OF WORK. Notwithstanding anything herein to the contrary, Atlantic makes no warranties with respect to any portion of any deliverable developed or modified by Client or by any third party, including any third party software, hardware or other third party products.

**7.2. Client.** Client represents and warrants it has the full right, power, authority and permission to arrange for and authorize the performance of the Services set forth in a Statement of Work, both now and in the future. Client also represents and warrants information pertaining to scanning services such as Client-provided IP addresses and devices functioning at those IP addresses are owned or controlled by Client and Client is legally entitled to authorize scanning services be performed upon such IP addresses. Should Atlantic not be able to verify ownership of the IP addresses as being owned by Client through the American Registry for Internet Numbers (ARIN) or similar agency such as RIPE NCC, LACNIC or APNIC and Atlantic's performance of the Services upon such IP addresses results in liability for any party, Client shall indemnify and hold harmless Atlantic, its corporate affiliates, business partners and any employee, director, officer or agent thereof against all liability, including reasonable attorney's fees and costs, arising from the performance of scanning Services contemplated by any Statement of Work.

**8. INDEMNIFICATION FOR PERSONAL INJURY & PROPERTY DAMAGE.** To the extent allowable under s. 768.28, Fla. Stat., each party shall indemnify, hold harmless, and defend the other party from and against any and all third party suits, actions, damages, costs, losses, or expenses (including reasonable attorneys' fees) relating to or arising out of bodily injury or death of any person or damage to real and/or tangible property to the extent proximately caused by the grossly negligent or willful acts or omissions of the indemnifying party, its personnel or agents in connection with the performance of activities relating to this Agreement.

**9. LIMITATION OF LIABILITY.** NEITHER PARTY AND ITS BUSINESS PARTNERS SHALL BE LIABLE TO THE OTHER PARTY AND ITS BUSINESS PARTNERS FOR ANY LOST DATA, LOST PROFITS OR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR OTHER INDIRECT DAMAGES OF ANY KIND FOR ANY REASON WHATSOEVER INCLUDING, BUT NOT LIMITED TO, DAMAGES BASED UPON NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, OR ANY OTHER THEORY. CLIENT AGREES ATLANTIC'S LIABILITY HEREUNDER FOR DAMAGES, REGARDLESS OF THE FORM OF ACTION, SHALL NOT EXCEED 100% OF THE TOTAL AMOUNT ACTUALLY PAID TO ATLANTIC OVER THE PREVIOUS TWELVE MONTH PERIOD FOR SERVICES AND DELIVERABLES CAUSING THE LOSS OR INJURY OR ARE THE SUBJECT MATTER OF THE CLAIM OR CAUSE OF ACTION. THE PARTIES AGREE THE LIMITS STATED HEREIN ARE FAIR UNDER THE CIRCUMSTANCES.

**10. FORCE MAJEURE.** Atlantic shall not be liable for any delays or failures in performance due to circumstances beyond its reasonable control which could not be avoided by the exercise of due care. Such acts include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, government regulations imposed after the fact, fire, communications line failure, computer failures, severe weather, freight embargoes, power surges or failures, earthquakes or other disasters.

**11. TERM and TERMINATION.**

**11.1. Term.** This Agreement is effective as of the Effective Date and will continue in effect through the later of one (1) year after the Effective Date or the completion of all outstanding Statements of Work (the "Term"). Notwithstanding the foregoing, the termination or expiration of one Statement of Work shall not affect this Agreement or any other Statement of Work. In the event this Agreement is terminated or expires and a Statement of Work hereunder is still in effect and not terminated or expired, the provisions of this Agreement shall govern such Statement of Work until its termination or expiration. Upon termination or expiration of this Agreement, each party shall promptly return all Confidential Information and any other information, documents, manuals, equipment and other materials belonging to the other party.

**11.2. Termination.** Either party may terminate this Agreement upon the occurrence of a material breach by the other party, which material breach has not been cured within thirty (30) days written notice.

**12. NON-SOLICITATION.** During the Term of this Agreement and continuing through the first anniversary of the termination of this Agreement, neither party (or its affiliates, subsidiaries, or partners) shall actively solicit to employ or employ any employee of the other party, its affiliates or business partners who has performed any material work for the hiring party under this Agreement, and with whom the hiring party has had direct contact under this Agreement, without the other party's written consent. However "actively solicit to employ or employ" shall not be deemed to include general recruitment advertising or postings addressed to the general public.

**13. GENERAL PROVISIONS.**

**13.1. Survival.** In the event of any termination of this Agreement, Sections 0, 0, 0, 0, 0, 0, 0, 0 and 0 shall survive and continue in effect.

**13.2. Complete Understanding; Modification.** This Agreement and any duly executed Statements of Work constitute the complete and exclusive understanding and agreement of the parties and supersede all prior understandings and agreements, whether written or oral, with respect to the subject matter hereof. When Client issues a purchase order to Atlantic, the only conditions and terms of the purchase order that shall be considered valid are the names of the products and/or Services provided (i.e. unit, quantity, unit price, extended price, order date and delivery date). Notwithstanding the foregoing, all other pre-printed or added terms and conditions of such purchase order or like forms used by Client, which are intended to vary the terms of a Statement of Work or this Agreement, are void even if acknowledged in writing by Atlantic. Any waiver, modification or amendment of any provision of this Agreement or any Statement of Work will be effective only if in writing and signed by both parties hereto.

**13.3. Non-Assignability and Binding Effect.** Neither party shall have the right to assign this Agreement or any Statement of Work to any third party without the other party's prior written consent except via a merger, acquisition or sale of substantially all of the assets of a party, in which case consent shall be automatic and notice shall be provided to the other party in a commercially reasonable manner. Subject to the foregoing, this Agreement and any Statement of Work shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

**13.4. Notices.** All notices regarding the terms of this Agreement related to disputes, non-renewal or termination shall be sent by registered or certified mail, return receipt requested, overnight delivery (such as Federal Express or UPS) or by personal delivery per the respective addresses set forth herein. Any notices regarding operational matters may be sent via mutually agreed upon procedures, including via overnight delivery, facsimile or e-mail.

**13.5. Governing Law.** This Agreement, including any Statement of Work, and any claims, whether in contract, tort or otherwise, arising from this Agreement or any Statement of Work shall be governed by and interpreted in accordance with the laws of Florida, without giving effect to principles of conflicts of law. The parties agree that the state and federal courts sitting in Leon County, Florida USA shall have proper and exclusive jurisdiction and venue for any proceedings arising from this Agreement.

**13.6. No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer on any person or entity any rights or remedies in or by reason of this Agreement.

**13.7. Severability.** In the event that any one or more of the provisions contained in this Agreement, or the application thereof in any circumstances, is held invalid, illegal, or unenforceable in any respect for any reason in any jurisdiction, the remaining provisions contained in this Agreement shall not be in any way impaired thereby.

**13.8. Counterparts.** This Agreement may be executed in one or more counterparts and via facsimile, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**13.9. Independent Contractor.** The parties agree that Atlantic is an independent contractor and not an employee, agent, joint venturer, or partner of Client. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Client and either Atlantic or any employee or agent of Atlantic.

IN WITNESS WHEREOF, intending to be legally bound, the parties have executed this Agreement as of the date first written above.

DocuSigned by:  
**Atlantic Data Security, LLC**  
By: Scott Kasper  
Name: Scott Kasper  
Title: General Manager  
Date: 4/21/2020

DocuSigned by:  
**[Client]**  
By: Hugh Brown  
Name: Hugh Brown  
Title: General Counsel  
Date: 4/21/2020