**GRADIENT MASTER SERVICES AGREEMENT**

This Master Services Agreement (the “***Agreement***”), effective \_\_\_\_\_\_\_\_\_\_, 2023 (the “***Effective Date***”), is between Ares Technologies, Inc. DBA Gradient Technologies, a Delaware corporation with a place of business at 99 Chauncy St., Suite 902, Boston, MA 02111 (“***Company***”), and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, a \_\_\_\_\_\_\_\_\_\_ [corporation], with a place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“***Customer***”). The parties agree as follows:

# ENGAGEMENT.

## **Order Forms.** This Agreement shall be implemented through one or more written statements of work or order forms (containing such information as generally illustrated in Exhibit A attached hereto) executed by the parties from time to time (each, an “***Order Form***”), and provides the terms and conditions applicable to all Order Forms. Any modification of these terms and conditions within an Order Form shall apply only to that Order Form in which the modification is set forth. Customer hereby engages Company to provide the services defined in each Order Form (the “***Services***”), and Company accepts such engagement.

## **License.** Company hereby grants Customer a non-exclusive, non-transferrable, non-sublicensable, limited access to and a right to use the Services solely in accordance with the terms of this Agreement and any applicable Order Form (the “***License***”). Customer will not directly or indirectly: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services; (b) modify, translate or create derivative works based on the Services; (c) copy, rent, lease, distribute, pledge, assign or otherwise transfer or encumber rights to the Services; or (d) remove any proprietary notices. Customer will not copy, frame or mirror any content forming part of the Services other than for its own internal business purposes, and Customer will not access the Services in order to (i) build a competitive product or service or (ii) copy any ideas, features, functions or graphics of the Services.

# FEES AND PAYMENT.

Customer’s access to and use of the Services is subject to payment of any applicable fees in accordance with the prices and payment policies set forth on the applicable Order Form (“***Fees***”). In addition to the Fees, the Customer shall be responsible for any and all sales, use or similar taxes applicable to the use of the Services by the Customer or its authorized users. Unless otherwise specified in an Order Form, all Fees shall be invoiced annually in advance, and all invoices issued under this Agreement are payable in U.S. dollars within thirty (30) days from date of invoice. Past-due invoices are subject to interest on any outstanding balance of the lesser of one-and-a-half percent (1.5%) per month, or the maximum amount permitted by law. Unless otherwise set forth in an Order Form, all renewals will be billed at then-current rates. All Fees paid are non-refundable and are not subject to set-off.

# IMPLEMENTATION AND SUPPORT.

## **Implementation.** Upon payment of any applicable fees set forth in each Order Form, Company will provide standard implementation assistance for the Services to the extent set forth on such Order Form.

## **Service Levels.** Company will provide support and uptime for the Services in accordance with standard Service Level Agreement set forth in Exhibit B.

# CONFIDENTIALITY.

## **Proprietary Information.** Each party (the “***Receiving Party***”) understands that the other party (the “***Disclosing Party***”) has disclosed or may disclose information relating to the Disclosing Party’s technology or business (hereinafter referred to as “***Proprietary Information***” of the Disclosing Party).

## **Restrictions.** The Receiving Party agrees: (a) not to divulge to any third party any such Proprietary Information, (b) to give access to such Proprietary Information solely to those employees with a need to have access thereto for purposes of this Agreement and (c) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (i) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, (ii) was in its possession or known by it prior to receipt from the Disclosing Party, (iii) was rightfully disclosed to it without restriction by a third party or (iv) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement shall prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order.

# CUSTOMER OBLIGATIONS.

## **Customer Data.** Customer will use the Services only in compliance with all applicable laws and regulations and will not knowingly provide any information or data that may be stored, processed or otherwise used by the Services (“***Customer Data***”) that: (a) imposes an unreasonable or disproportionately large load on Company’s computing, storage or communications infrastructure, or attempts to gain unauthorized access to the Services, or any user accounts, computer systems or networks connected to the Services, through password mining or otherwise; (b) contains software viruses or any other computer codes, files or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware or network system or to damage or obtain unauthorized access to any system, data or other information of Company or any third party; or (c) violates or infringes in any way upon any patent, trademark, trade secret, copyright, right of publicity, privacy right or other right of any party.

## **Customer Authorized Users.** Customer will be responsible for compliance with this Agreement by its authorized users. Customer will permit no more users to access the Services than as set forth in the applicable Order Form. Customer will be responsible for keeping all account information up to date and will notify Company immediately of any unauthorized use of the Services or any other breach of security.

## **No Unauthorized Access.** Customer will use the Services only for its internal business purposes and only in accordance with, and as contemplated by, any documentation provided therewith. Any unauthorized use of the Services is expressly prohibited. Customer will not attempt to gain unauthorized access to the Services or their related systems or networks.

## **Systems.** Except as expressly set forth in an applicable Order Form, Customer shall be responsible for obtaining and maintaining any equipment, telecommunications services and other infrastructure needed to connect to, access or otherwise use the Services. Customer shall also be responsible for maintaining the security of such infrastructure and of its account and passwords, and all activity occurring under its account.

## **Failure to Cure**. Upon advance written notice and after Customer has failed to cure any breach of the aforementioned provisions within five (5) business days, Company may suspend Customer’s or any Customer’s users’ access to the Services.

# SERVICE AUDIT.

Company shall have the right to audit Customer’s and Customers’ users’ use of the Services to determine Customer’s compliance with the License. Additional fees will apply if Customer’s use of the Services is found to exceed the rights granted to Customer under the License. Such fees will be determined in accordance with Company’s standard pricing, and Customer will pay such fees within thirty (30) days from the date of invoice. Upon reasonable notice from Company, Customer will provide Company with reasonable assistance to conduct such audit.

# CUSTOMER CONTENT.

## **Ownership.** As between the parties, Customer retains all rights, title and interests in and to the Customer Data, including all intellectual property rights therein. Customer represents and warrants that Customer owns or otherwise controls all rights to such Customer Data (or has the right to use such Customer Data in connection with the Services) and that use of the Customer Data by Company will not infringe or violate the rights of any third party.

## **License.** Customer hereby grants and agrees to grant Company and its affiliates and licensees a non-exclusive, royalty-free, worldwide right and license to: access, copy, store, process, distribute, transmit and otherwise use the Customer Data for the purposes of providing the Services (and support services) to Customer.

# COMPANY PROPRIETARY RIGHTS.

As between the parties, Company retains all rights, title and interests (including all intellectual property and proprietary rights) in and to the Services and all software, products, outputs from the Services, derived data, analytics, works and other intellectual property and moral rights related thereto or created, used or provided by Company for the purposes of this Agreement, including any copies and derivative works of the foregoing.

# TERM; TERMINATION; SURVIVAL.

## **Term.** This Agreement shall commence upon the Effective Date and continue in effect until [one (1) year / three (3) years] after the Effective Date. This Agreement shall automatically renew for successive terms of one (1) year each, unless either party provides the other with written notice of its intent not to renew at least ninety (90) days prior to the end of the then-current term (the initial term and any and all renewal terms collectively, the “***Term***”).

## **Termination.** Either party may terminate this Agreement or any Order Form, in whole or in part, upon written notice to the other party in the event: (a) such other party materially breaches its obligations under this Agreement or an Order Form and fails to cure such breach within thirty (30) days (fifteen (15) days in the event of non-payment of undisputed amounts) from receipt of written notice thereof or (b) such other party suffers an Insolvency Event. An “***Insolvency Event***” will mean, with respect to a party, that such party (i) ceases to carry on business as a going concern without a successor or (ii) files a bankruptcy petition or has such a petition filed involuntarily against it (which petition is not stayed or dismissed within ninety (90) days), become judicially declared insolvent, makes an assignment for the benefit of creditors or consents to the appointment of a trustee or receivership to manage all or substantially all of its assets.

## **Removal.** Upon request by Customer after the effective date of termination or expiration of this Agreement, Company will delete all Customer Data.

## **Effects of Termination.** Upon any termination or expiration of this Agreement, (a) Customer will immediately cease using the Services and (b) the provisions of Sections 8–13, and any and all remedies for breach of this Agreement shall survive. Notwithstanding the foregoing, termination shall not relieve the Customer of any accrued payment obligations, which shall be due and payable upon termination. Customer shall be responsible for any reasonable costs of collection incurred by Company to collect any amounts not paid when due.

# DISCLAIMER OF ALL WARRANTIES.

# EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES AND ANYTHING ELSE PROVIDED BY COMPANY HEREUNDER IS PROVIDED “AS IS” AND “AS AVAILABLE” AND IS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE, USAGE OF TRADE, OR COURSE OF DEALING, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

# LIMITATION OF LIABILITY.

## EXCEPT FOR THE PARTIES’ INDEMNIFICATION OBLIGATIONS OR BREACHES OF SECTION 1.2, IN NO EVENT SHALL EITHER PARTY, NOR ITS DIRECTORS, EMPLOYEES, AGENTS, PARTNERS OR SUPPLIERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (A) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER OR (B) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) THE FEES PAID (OR PAYABLE) BY CUSTOMER TO COMPANY HEREUNDER IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO A CLAIM HEREUNDER.

# INDEMNIFICATION.

## **Indemnities.** Each party (“***Indemnitor***”) shall defend, indemnify and hold harmless the other party, its affiliates and each of its and its affiliates’ employees, contractors, directors, suppliers and representatives (collectively, the “***Indemnitee***”) from all liabilities, claims, and expenses paid or payable to an unaffiliated third party (including reasonable attorneys’ fees) (“***Losses***”) that arise from or relate to any claim that (a) the Customer Data (in the case of Customer as Indemnitor) or (b) use of the Services (in the case of Company as Indemnitor) infringes, violates or misappropriates any third-party intellectual property or proprietary right.

## **Procedure.** Each Indemnitor’s indemnification obligations hereunder shall be conditioned upon the Indemnitee providing the Indemnitor with: (i) prompt written notice of any claim (provided that a failure to provide such notice shall relieve the Indemnitor of its indemnity obligations only if the Indemnitor is materially prejudiced by such failure); (ii) sole control over the defense and settlement of any claim (provided that the Indemnitee may participate in such defense and settlement at its own expense); and (iii) reasonable information and assistance in connection with such defense and settlement (at the Indemnitor’s expense).

## **Exclusions.** The foregoing obligations of Company do not apply with respect to the Services or any information, technology, materials or data (or any portions or components of the foregoing) to the extent (a) not provided by Company (including without limitation any Customer Data), (b) made in whole or in part in accordance to Customer specifications, (c) modified after delivery by Company, (d) combined with other products, processes or materials not provided by Company (where the alleged Losses arise from or relate to such combination), (e) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement or (f) Customer’s use of the Services is not strictly in accordance with this Agreement.

# GENERAL PROVISIONS.

## **Entire Agreement.** This Agreement (including any exhibits attached hereto) is the entire agreement between Customer and Company with respect to access, use and operation of the Services, and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between Customer and Company with respect to the Services.

## **Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

## **Execution**. Execution of a facsimile copy (including PDF) or by electronic signature (e.g., DocuSign) shall have the same force and effect as execution of an original, and a facsimile or electronic signature shall be deemed an original and valid signature

## **Amendments**. This Agreement may not be amended, except by a written agreement executed by Customer and Company.

## **Waiver.** All waivers, consents and modifications must be in a writing signed by both parties, except as otherwise provided herein.

## **Governing Law and Venue.** This Agreement shall be governed by and will be construed under the laws of the State of Delaware, without regard to the conflicts of laws provisions thereof, and the parties consent to exclusive jurisdiction and venue in the state and federal courts located in Kent County, Delaware.

## **Assignment.** Customer’s rights and obligations under this Agreement are personal to Customer and are not assignable, transferable or sublicensable by Customer except with Company’s prior written consent. This Agreement will be binding upon, and inure to the benefit of, the successors, representatives, and permitted assigns of the parties.

## **Independent Contractor.** No agency, partnership, joint venture or employment relationship is created as a result of the Services or this Agreement, and neither party has any authority of any kind to bind the other in any respect.

## **Headings.** The headings of each section in this Agreement have been inserted for convenience of reference only and are not intended to limit or expand the meaning of the language contained in the particular section.

## **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next-day delivery by recognized overnight delivery service.

[Signature Page to Follow]

**IN WITNESS WHEREOF,** intending to be legally bound, the parties have caused their duly authorized officers to execute this Agreement as a sealed instrument, as of the Effective Date.

**COMPANY CUSTOMER**

By: By:

Name: Name:

Title: Title:

**STATEMENT OF WORK #\_\_\_\_**

**SERVICE LEVEL AGREEMENT**

This Service Level Agreement (the “***SLA***”) sets forth the policies and procedures with respect to services (the “***Services***”) provided by Company to a customer (“***Customer***”) pursuant to a Master Services Agreement between Company and Customer (a “***Customer Agreement***”). All capitalized terms used herein without definition shall have the same meanings set forth therefor in the Customer Agreement.

# UP-TIME AND RELIABILITY.

Company will use reasonable efforts to make the Services available to Customer for 99.0% of all Scheduled Availability Time, calculated on a monthly basis (the “***Uptime Guarantee***”). “***Scheduled Availability Time***” shall be defined as twenty-four (24) hours a day, seven (7) days a week, excluding: (a) scheduled maintenance, upgrades and repairs; (b) downtime due to acts of Customer or any third-party connections, utilities, or equipment; and (c) downtime related to any other forces beyond the reasonable control of Company (such as internet outages or outages with respect to Customer’s network or internet access). All scheduled maintenance will be conducted between the hours of 12:00 am EST and 5:00 am EST, provided that Company may, in its sole discretion, plan additional scheduled maintenance, which will be communicated to Customer (by email) at least twenty-four (24) hours in advance. Customer will use commercially reasonable efforts to minimize any disruption, inaccessibility or inoperability of the Services in connection with outages, whether scheduled or not.

# REMEDY.

If Gradient fails to meet the Uptime Guarantee in any month during the Term, and Customer is in compliance with all of its obligations under this SLA and the Customer Agreement, Customer will be entitled to receive the Credit described below. Customer must request the applicable Credit within seventy-two (72) hours following the end of the calendar month in which the failure occurred. The Credit shall be Gradient’s sole obligation and Customer’s exclusive remedy with respect to any failure by Gradient to meet the Uptime Guarantee; *provided*, Customer may terminate this Agreement upon written notice to Gradient if Gradient fails to meet the Uptime Guarantee more than three (3) times over any twelve (12) month period. The Credit(s) shall be calculated against a pro-rated monthly amount based on the annual Fees payable to Gradient (i.e., annual fees payable for the applicable year divided by 12) (“***Monthly Fees***”) and shall be applied to the next billing cycle under the Customer Agreement.

| **Actual Services Uptime Percentage** | **Service Availability Credit %** |
| --- | --- |
| > 95.0% but < 99.9% | 5% of Monthly Fees |
| > 90.0% but < 95.0% | 10% of Monthly Fees |
| < 90.0% | 15% of Monthly Fees |

# MAINTENANCE AND SUPPORT; CUSTOMER OBLIGATIONS.

During the Term, Company will make available to Customer all generally available updates and bug fixes to the Services. For technical information, technical advice and technical consultation regarding Customer’s use of the Services, Customer can reach Company at support@gradient.tech, which will be monitored by Company personnel from 9:00 am EST to 5:00 pm EST, Monday through Friday, excluding Company-observed holidays. Company will use commercially reasonable efforts to promptly respond to support inquiries. Customer shall be responsible for the maintenance, management and accuracy of all software, hardware and services Customer uses to access the Services. Customer will provide to Gradient, and keep current, a list of designated contacts and contact information (the “***Support List***”) for Gradient to contact for support services. The Support List shall include (a) the first person to contact for the answer or assistance desired and (b) the persons in successively more responsible or qualified positions to provide the answer or assistance desired.