



## **MASTER SERVICE AGREEMENT**

This MASTER SUPPLIER AGREEMENT ("Agreement") is made this 14<sup>th</sup> September 2023 between **Knack NYC** ("Supplier"), located at 4275 Executive Square, Suite 200, La Jolla, CA 92037, with Federal Id 47-2434266 and **Storm Flag, INC.** ("Client") with Federal Id 81-5476813 located at **1362 Canton Ave, Milton, Massachusetts, 02186.**

In consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt, and sufficiency of which are hereby acknowledged, Client and Supplier agree as follows:

The term "Client" for the purposes of this Agreement shall include any Client and Clients of the Client (together referred to as "Client") of Client to whom Supplier was introduced for the purposes of performing services to or to whom Supplier provided services to in connection with this Agreement.

**1. Services.** During the term of this Agreement, when requested by Client, Supplier shall provide professional computer consulting, programming, development, and other related services to one or more designated Clients of Client. Supplier shall provide services: (a) in accordance with the Purchase Order approved by both Client and Supplier; and (b) at the times, the location(s), and subject to the direction, instructions and conditions determined by the Client.

### **2. Consultants.**

**a.** When and as required by Client, Supplier shall furnish one or more W2 employees who are qualified computer professionals (each, a "Consultant") and who are qualified in accordance with accepted professional industry standards to perform the services required to satisfy any and all of the requirements outlined for a position offered through Client and/or its client(s). Supplier is completely responsible for selection and submission of the Consultant(s) to perform services under this Agreement and related Purchase Orders, provided that Client or the Client may reject any Consultant selected by Supplier. In such cases, Supplier shall promptly furnish another qualified Consultant.

**b.** Supplier represents and warrants that Supplier shall only submit and provide the services of Supplier's own W2 employees. If Supplier's Consultant is on a work visa, only Supplier shall be the sponsor/holder of said visa. Supplier will be required to submit documentation in order to verify compliance with this section including a valid I9 form, E-verify employment approval, Visa copies and periodic proof of W2 payroll issued to Consultant. Supplier acknowledges and understands that violation of this W2 requirement set forth herein is considered a material breach of this Agreement and Supplier shall indemnify Client from any and all damages imposed against it from its Client for Suppliers violation of providing non-W2 employees.

**c.** Supplier agrees to submit updated work authorization along with updated I9 forms prior to any expirations dates and understand compliance with this provision is a prerequisite to any invoice payments being made.

**3. Term.** This Agreement shall be effective upon the execution hereof by the parties and shall remain in effect for an initial period of one (1) year. This Agreement shall automatically renew for successive periods of one year, unless and until terminated by either party as provided below.

### **4. Termination.**

**a. Agreement:** Client or Supplier may terminate this Agreement at any time for any reason by giving two (2) weeks written notice to the other party.

**b. Purchase Order:** Supplier understands that due to contract requirement with its client(s) and to provide for a professional transition and transfer of knowledge with Client's Client, Supplier must provide a minimum of fourteen (14) days prior written notice to end any services under a Purchase Order for any reason. Client may terminate any individual Purchase Order with no notice, on the understanding



that Client's client has terminated the Purchase Order or, due to a breach of contract by Supplier or its Consultant's performing services, or any instance of unprofessional behavior by consultant. Supplier agrees to indemnify Client for any damages that may be assessed by Client for breach of this section.

**c. Return of Equipment:** Upon termination of this Agreement and/or individual Purchase Order services, Supplier and Suppliers Consultant shall return to Client and/or its Client all equipment, computers, phones, badges, or any items issued to Consultant for use during performance of services. Items will be returned in workable condition and free from damage. Final payment will not be issued until all equipment has been returned. Any items not returned shall have full replacement value and/or charges/damages assessed to Client by Client(s) for non-return of equipment offset from remaining payments due. If no balance is due, Supplier shall issue payment due under this section immediately upon demand along with a refund any costs associated with action to collect fees due under his sections.

**d. Client Communication:** Upon termination of this Agreement and/or individual services under a Purchase Order, Supplier warrants it will advise its consultant to provide for a professional transition of services. Consultant will immediately cease all communication with Client parties outside of follow up for final approved timesheet.

## **5. Payment.**

**a.** For each Consultant, Supplier shall submit an accurate invoice in the frequency specified in the Purchase Order along with the timesheets approved by an authorized Client representative. Client will pay Supplier for invoiced services in accordance with the billing rate(s) specified in each Purchase Order and will be made within Five (5) business days of receipt of funds from the Client covered by the Purchase Order. Supplier may opt for an optional advanced payment as outlined in the Purchase Order. If Client advances funds to Supplier prior to receiving funds from the Client, it is only as an accommodation to Supplier. If an invoice is paid by Client but not paid by Client, Client shall be entitled to recover the full amount of such payment from Supplier at Client's option by deducting or offsetting from any payments due to Supplier.

**b.** All invoices for services rendered must be submitted within 30 days of period work was rendered. Additionally, all disputes regarding amounts payable to Supplier hereunder must be raised by Supplier, in writing, within thirty (30) days of receipt of any payment. Supplier hereby waives all rights to submit invoices, dispute amounts paid, or make claims with respect thereto, that are not raised within thirty (30) days' time.

## **6. Time Sheets and Expense Reimbursement.**

**A. Timesheets:** Supplier's Consultants shall use the timesheets as provided by/or instructed by Client and/or Client. The timesheets, duly approved by an authorized Client representative, are to be sent via email to Client in the frequency specified in the Purchase Order. If no frequency is specified, then the timesheet must be sent to Client weekly, within 2 working days of the end of the timesheet period. Supplier acknowledges that if a timesheet is not sent to Client on time, payments may be delayed. Moreover, Supplier may not be paid if the Client does not pay Client due to a delay in submission of timesheets.

**B. Expense Reimbursement:** If Client policy allows for expense reimbursement, Supplier may submit Client approved expense statements along with original receipts per Client guidelines and policy to Client for reimbursement. Client shall invoice Client on behalf of Supplier per Client guidelines for reimbursement. Upon receipt of Supplier's expense reimbursement payment from Client, Client shall issue reimbursement payment to Supplier within 5 days. Supplier understands that Client is solely responsible for payment of expense reimbursement. Client is not liable for any payment of expense reimbursement and Client's only obligation is to assist in the invoicing of expense reimbursement under Client guidelines and issue to Supplier upon receipt of payment from Client.

**7. Status of Parties.** Supplier agrees and acknowledges that it is an independent contractor with respect to Client and the Client(s) and that neither Supplier nor any of Supplier's Consultants shall be considered an employee or agent of Client or the Client(s). It is further agreed that nothing in this



Agreement shall be construed to create a joint venture, partnership, association, or other affiliation between the parties. It is agreed that this relationship is and shall remain that of independent parties to the contractual relationship set forth in this Agreement. Neither Supplier nor any of Supplier's Consultants shall be eligible to participate in any employee benefit plan or program, fringe benefit plan or program, or insurance plan or program, of any kind maintained by Client or its Client(s) in connection with the performance of services under this Agreement. Supplier shall be solely responsible for payment of all federal, state, and local taxes or contributions imposed or required under any employment laws, unemployment insurance, social security, and income tax laws with respect to services performed under this Agreement. Supplier shall indemnify Client from and against all liability and loss, including reasonable attorney's fees, in connection with, and shall assume full responsibility for, payment of all federal, state, and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to services performed under this Agreement and any related Purchase Order.

**8. Background Check.** Supplier agrees that if required, Supplier shall cooperate and instruct its Consultant to perform all required background screens in a timely fashion. All fees incurred by Client or charged to Client to perform Client required background screens will be deducted from Supplier invoice payment after paid by Client.

## 9. Warranty

**(a) Services Warranty Period.** Supplier represents and warrants that it and its consultants will provide services under this Agreement and any related Purchase Orders in accordance with the highest accepted industry standards. If Client or the Client is not satisfied with a consultant, for any reason, during the first two weeks ("warranty period") of providing services under this Agreement, Supplier will not receive payment for these hours unless Client receives payment from the Client.

**(b) Laws.** Supplier hereby represents, warrants, and covenants that it shall comply with all applicable Federal, State and Local statute, ordinances, regulations, rules, and executive orders. Supplier shall ensure that each Consultant presented to perform services hereunder is authorized to work in the United States and shall maintain valid status throughout the performance of services.

**(c) Necessary Employee Contracts.** Supplier represents and warrants that prior to the start of any services under a Purchase Order that it has obtained appropriate written agreements with its Consultant's and others, including any permitted subcontractors, whose services it may require, sufficient to enable full compliance with all the provisions of this Agreement.

**(d) Freedom to Contract / No Authority:** Supplier represents that it and its consultants are free to enter into this Agreement and that Supplier or its Consultants is not bound by any other restrictive covenant or prior agreements that prevent Supplier from working with Client or its Client(s). Supplier agrees that it will not disclose to Client or use for Client's benefit, any trade secrets or confidential information which Supplier is restricted from disclosing. Supplier further agree to indemnify and hold harmless Client from any and all damages that may occur as a result of any violation of this section

**(e) Work Product.** Supplier represents and warrants the originality of any work performed or Work Product (as defined herein) delivered under this Agreement, and that no portion of such Work Product violates or is protected by patent, copyright, trade secret, or other intellectual property or other rights of Supplier or any third party. For purposes of this Section, Work Product shall not include materials supplied by Client or the Client. In addition to the indemnity described if an infringement claim threatens Client's or the Client's continued use of any Work Product completed by Supplier under this Agreement, Supplier shall in the following order and at no cost to Client or the Client: (i) obtain the right for Client and the Client to continue use of such Work Product, (ii) repair or modify the Work Product so it is both non-infringing and functionally and operationally equivalent to the Work Product initially delivered or (iii) provide replacement Work Product which is functionally and operationally equivalent to the Work Product initially delivered. If none of the foregoing is possible, then Client shall



have the immediate right to terminate this Agreement with full refund of all fees paid by Client hereunder which relate to such Work Product.

#### **10. Confidentiality.**

**a)** Supplier acknowledges that during the course of performing services under this Agreement and related Purchase Orders, it may have access to Client's and/or Client's trade secrets and confidential information. Supplier agrees that all such information shall be used only to accomplish the project and fulfill its obligations under this Agreement and any related Purchase Orders, and for no other purpose. Supplier agrees that they shall in no manner reveal or disseminate such information to any third party. Supplier understands that such trade secrets and confidential information shall include all past, present and/or future plans, provisions, designs, forms, formats, procedures, methods and other information relating to Client's and Client's technology, technical data, products, patents, copyrights, research and development programs, legal and marketing data and other technical and business information. Confidential information and trade secrets do not include: (i) information already known to Supplier on the date of this Agreement and was obtained without any breach of confidentiality of other parties, (ii) information which is or becomes part of the public domain through no fault of Supplier: and (iii) information which is known or able to be ascertained by a non-party of ordinary skill in computer design and programming.

**b) Return of Records.** Upon termination of this Agreement or individual Purchase Order services, or upon request of Client or its' Client, Supplier shall return to Client all records, notes, data, memoranda, models, and equipment of any nature that are in Supplier's control and that are Client or it's Client's property or relate to Client or its's Client's business.

**c) Non-Disclosure of Compensation Information.** Supplier agrees that it will not disclose the rate of compensation payable under this Agreement to the Client or any other third-party other than its attorneys, accountants, or other consultants or advisors or except as may be required by any governmental authority.

**11. Supplier & Consultant Client Communication.** Except as otherwise directed by Client, Supplier will deal directly with Client with respect to Supplier's services hereunder. Supplier will not communicate directly on any matter with any Client of Client in which it has been introduced to or performing services for and covenants that it will not circumvent this Agreement in any way. Supplier warrants that it has instructed its Consultants that at no time shall Consultant communicate with Client on matters relating to employment, payroll, or project rates. The parties agree this restriction is not intended to restrict or prohibit necessary day -to-day communication between Consultants and Client with regard to the services being performed.

**12. Non-Competition and Non-Solicitation.** This Section shall be effective during the term of this Agreement and any renewals thereof, and for one year after the expiration of the initial period and any renewal periods, whichever is later. Client has made substantial investments to establish long-term, near permanent relations with its clients, the loss of which would constitute substantial and irreparable injury and financial loss to Client. As a condition of providing subcontracting opportunities through Client to its Clients, Supplier its affiliates or its subsidiary companies shall not directly, indirectly or in circumvention of this Agreement in any way violate any of the following conditions:

**(a)** Solicit or accept any opportunity to provide consulting services, except through Client, to any Client(s), in which Supplier has been introduced, submitted for opportunities, received information about or provided services for under this Agreement through Client.

**(b)** Advise any individual or entity other than Client of opportunities to provide staffing services with Client(s) in which Supplier has been introduced, submitted for opportunities, received information about or provided services for under this Agreement through Client.

**(c)** Contact employees, contractors, managers, representatives, or officers of the Client(s), unless contact is instructed by Client.



**(d)** Solicit or hire directly or indirectly any employee or independent contractor of Client or Client(s) with which Supplier had contact in connection with this Agreement.

**(e)** Client agrees it shall not hire any employee or independent contractor of Supplier while they are performing services under this Agreement provided that Supplier is paying its employee or independent contractor on a regularly scheduled basis, on-time, and per applicable state employment laws. Violation of this section (e) shall cause Client, at its option, to hire directly or indirectly the employee or independent contractor with no liability to Supplier. Supplier acknowledges and agrees that Supplier will cause substantial harm to Client if Supplier violates any provision of this Section 12.

**13. Intellectual Property.** Supplier agrees that all ideas, inventions, improvements, documents, information or other data generated or developed while rendering services pursuant to this Agreement and related Purchase Orders, including but not limited to any and all source and object code, applicable documentation, information, data, models, equations, studies, calculations, solutions, reports, drawings, process flows, modifications and/or adaptations of existing software and inventions developed or reduced to practice by Supplier while providing such services (hereinafter 'Work Product'), shall be the sole and exclusive property of Client and/or its Clients and may be used by Client and/or its Client for any purpose whatsoever without Supplier's consent, and without obligation of any further compensation to Supplier and shall be delivered by Supplier to Client. Consultant shall not use any portion of the Work Product in any projects for any third party.

To the extent permitted by law, any Work Product created as a result of this Agreement will constitute "Works made for hire," and the ownership of such Work Product will vest in Client and/or its client at the time it is created. To the extent such Work Product does not constitute "works made for hire" under applicable law, Consultant hereby assigns and transfers to Client and/or its Client all right, title, and interest that Supplier may now or hereafter have in that Work Product, subject to the limitations set forth below. Supplier shall promptly disclose to Client all such Work Product. Supplier shall take such action (including, but not limited to, the execution, acknowledgment, delivery and assistance in preparation of documents or the giving of testimony) as may be requested by Client and/or its Client to evidence, transfer, vest or confirm Client and/or its Client's right, title and interest in such Work Product. Nothing in this Agreement shall obligate Supplier to assign or offer to assign any of its rights in an invention for which no equipment, supplies, facilities or trade secret information of Client or Client's Client was used and which was developed entirely on Supplier's own time, unless: (a) the invention relates directly to the business of Client or the Client, or to Client's or the Client's actual or demonstrably anticipated research or development; or (b) the invention results from any work performed by Supplier for Client or the Client.

**14. Indemnification.** Supplier shall indemnify, defend, and hold harmless Client, the Client and their respective parents, affiliates, subsidiaries, directors, officers, shareholders, employees, agents and representatives from and against any and all liability claims, demands or causes of action, including reasonable attorney's fees, resulting from: (a) any act or omission by such Supplier, or its Consultants, officers, agents or employees in connection with this Agreement or related Purchase Order; or (b) any breach by Supplier of any provision, warranty or representation in this Agreement or related Purchase Order. Supplier further agrees to pay, and to defend at Supplier's cost, and to indemnify and hold Client and its respective partners, members, affiliates and subsidiaries, and all of their respective officers, directors, shareholders, employees, servants, partners, representatives, insurers and agents (herein collectively referred to as Client Indemnitees"), harmless from and against any and all claims, actions, liabilities, losses, costs and demands (herein collectively referred to as "Claims"), in the event any such Claims are caused or contributed to by the acts or omissions of Supplier, Supplier's contractors, subcontractors and materialmen, regardless of tier, and its and their officers, agents or employees, or arise out of, as a result of or in connection with any agreement or contract between Supplier and Client, or any agreement or contract necessary thereto, or the performance of any work performed by Supplier, Supplier's employees, agents, or contractors, even if such claims are caused solely or in part by the negligence of any Client Indemnitee. This indemnity shall survive the expiration or termination of any agreement or contract between Supplier and Client.

**15. Limitation of Liability.** In no event shall Client be liable to Supplier for any third-party claim or for any indirect, special, or consequential damages, including but not limited to lost profits, in connection



with or arising out of this Agreement or any related Purchase Order, whether or not Client has been advised of the possibility of such damages. Client makes no representations or guarantees, expressed or implied, regarding the total number of hours that Supplier may work or revenue that may ultimately be derived by Supplier as a result of this Agreement.

**16. Insurance.** Supplier agrees to maintain, at its own expense and to keep in full force and effect at all times as outlined in 16.1, while providing services hereunder, the below outlined minimum insurance requirements. If Client requires additional insurance, such additional Client insurance requirements will be outlined in the associated Purchase Order.

**16.1 Minimum Insurance Requirements.**

**a) Commercial General Liability** coverage with limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the annual aggregate

**b) Commercial Auto Liability** coverage in an amount no less than One Million Dollars (\$1,000,000) to include any owned, hired, non-owned or leased vehicles.

**c) Workers' Compensation** insurance equal to or greater than the applicable statutory requirement for contractor's employees

**d) Employers' Liability** insurance coverage for \$1,000,000 per claim for injury or disease and \$1,000,000 annual aggregate.

**16.2 Insurance Certificate.**

**a)** Supplier shall provide Client with certificate of insurance evidencing required coverages and listing Client, as an additional insured for General Liability, Auto Liability. Supplier is responsible for providing Client with updated insurance certificates upon expiration. Additional Insured shall be listed as:

Company Name:

Address:

**b)** All policies of insurance shall provide for 30 days written notice of cancellation to Client for any material changes, cancellation or non-renewal of any insurance coverages listed in this agreement.

**c)** Contractor shall provide language that includes a waiver of subrogation against Client for General Liability, Auto Liability and Employers Liability.

**d)** To the extent such coverage is covered under a claims-made policy of insurance, contractor shall also provide, at contractor's own expense, "tail" coverage upon termination of the relevant policy(ies) extending to all periods during which contractor provided Goods and Services to Client.

**16.3 Insurance Non-Compliance.** Supplier must provide a valid certificate of insurance outlining the required insurance levels and clauses outlined herein prior to start of services. Supplier acknowledges that its failure to secure and maintain the requisite insurance under this Agreement will result in additional costs and expense to Client ("insurance fee"). As compensation for such additional costs and expense, Supplier shall pay Client an Insurance Fee if Supplier opts not to carry required insurance, lacks adequate insurance coverage limit (treated as none for purposes of this section), lapses insurance coverage at any time or if the Supplier fails to provide updated insurance certificate prior to expiration. In such cases, the following Insurance Fees shall be charged:

**a)** 1% of billing rate for lack of General Liability Insurance

**b)** 1% of billing rate for lack of Commercial Auto Liability

**c)** 1% of billing rate for lack of Workers Compensation



- d) 1% of billing rate for lack of Employers Liability Insurance
- e) 3% of billing rate for lack of Client Required Insurance Limits

Supplier acknowledges that Client shall deduct Insurance Fees from Supplier invoice payments for any months in which a valid insurance certificate has not been provided for outlined coverages. Updated/renewal insurance certificates should be submitted to Client prior to expiration. Any partial month lapse or any partial coverage will be treated as lacking coverage for an entire month, Insurance Fees are not prorated.

**17. Priority.** During the term of this Agreement, Supplier shall allocate all reasonable and necessary resources to perform the services or a particular Purchase Order in an expedient manner until completion. Supplier acknowledges that time is of the essence in the performance of services under this Agreement.

**18. Assignment.** Neither party may assign its rights and obligations under this Agreement without the express written consent of the other party.

**19. Governing Law.** This Agreement and any related Purchase Orders shall be governed and construed in all respects by the laws of the State of California without giving effect to principles of conflicts of laws. Each of the parties irrevocably consents to any dispute, claim, or litigation arising out of or connected in any way to this Agreement to the exclusive personal jurisdiction of the federal or state courts located in the California, Supreme Court of California – County of California for any matter arising out of or relating to this Supplier Agreement.

**20. Notices.** Any notice, request or other communication made or given in connection with this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by registered or certified mail, return receipt requested, or by facsimile or by hand delivery, to those listed below at their following respective addresses or at such other address as each may specify by notice to the others:

**To: Storm Flag, INC.**

**1362 Canton Ave, Milton,  
Massachusetts, 02186**

**Attention: Legal Department  
To; Knack NYC, Inc.  
4275 Executive Square,  
Suite 200, La Jolla, CA 92037**

**21. Enforceability.** If any term or provision of this Agreement is declared illegal, invalid, or unenforceable, (i) that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision, and (ii) the legality, validity and enforceability of the remaining provision of this Agreement shall not be affected or impaired thereby.

**22. Waiver.** The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

**24. Entire Agreement.** This Agreement sets forth the entire understanding of the parties and supersedes any and all prior agreements (oral or written), arrangements and understandings between the parties hereto and shall be binding on the parties' successors and permitted assigns. This Agreement shall not be modified or amended except by a written agreement signed by authorized representatives both parties.



IN WITNESS WHEREOF, the parties hereby confirm their intent to be legally bound by the foregoing terms and have caused this Agreement to be executed by their duly authorized representatives.

Accepted by: Storm Flag Inc

Accepted by: \_\_\_\_\_

Name: Jeff De Puy

Name: \_\_\_\_\_

Title: Art Director

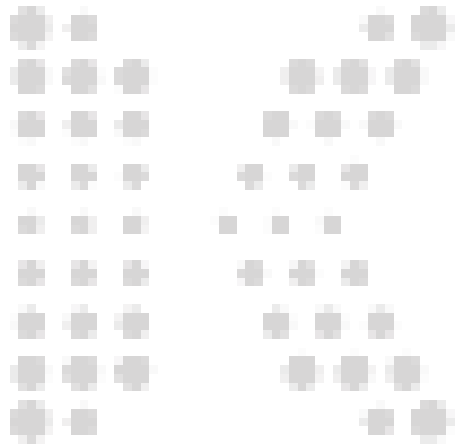
Title: \_\_\_\_\_

Date: 9/15/2023

Date: \_\_\_\_\_

For: Nina Jiani Lu

For: \_\_\_\_\_



knack





**Statement Of Work**

This document supplements and is hereby made a part of a certain Agreement entered into by and between Storm Flag, INC. (Client name), and Knack NYC hereinafter the "**COMPANY**"), dated 9/15/2023

Subject to the terms and conditions of the Agreement, the following is hereby supplemented:

Specified Personnel	Client Location	Rates	Start Dates
1. Nina Jiani Lu	Remote / 1362 Canton Ave, Milton, MA, 02186	\$76000/Annum	09/25/2023
2.			
3.			
4.			
5.			

**(Storm Flag Inc)**

**(Knack NYC)**

By:

By:

Date:

9/15/2023

Date:

\_\_\_\_\_