



MASTER SERVICES SUBSCRIPTION AGREEMENT

This Master Services Subscription Agreement (“**Agreement**”) is made by and between Sanmina Corporation, a Delaware corporation doing business as 42Q, with offices at 2700 North First Street, San Jose, CA 95134, hereinafter referred to as “Service Provider” and you (either an individual, a legal entity, or the U.S. Government), hereinafter referred to as “Customer” and contains the terms and conditions under which Service Provider agrees to license use of Service Provider’s proprietary Shop Floor Control Platform Solution (the “**Service(s)**”) and provide Maintenance and Support to Customer. Any reference to Service Provider shall include all of Service Provider’s affiliates, divisions and wholly owned subsidiaries. This Agreement shall become effective as of AWS Marketplace Subscribe Date.

It is acknowledged that the parties each agree as follows:

1. Definitions

The following terms shall have the following meanings:

“**Agreement**” means these terms and conditions and any supplemental Schedule appended hereto and made a part hereof and any other documents incorporated by reference and mutually agreed by the parties.

“**Documentation**” means Service Provider’s online user guides, documentation, and help and training materials, as updated from time to time.

“**Extract(s)**” means Customer Data included in bills of material, customer sales orders, work orders, receipt and shipment data extracted from Customer’s Enterprise Resource Planning (“ERP”) system or any other software application.

“**Extract Scripts**” means the proprietary Service Provider software scripts that are licensed during the Subscription Term to Customer in order to create the Extracts.

“**Customer Data**” means resident data created by Customer in transactional, reporting and archive databases that are extracted for use in connection with the Service Provider Service.

“**Customer Extract Scripts**” means those software scripts, if any that are independently developed by Customer to create Extracts.

“Maintenance and Support” means the Software Maintenance and Support provided by Service Provider as described in Section 5 and “Schedule A”, as may be updated from time to time during the Subscription Term.

“Services” means the Service Provider Software and Services that are ordered by the Customer pursuant to an “Order Form” and made available in a secure cloud-based environment by Service Provider as described in the Documentation.

“Software” means (i) the software application subscribed to by Customer pursuant to the attached “Schedule C”; (ii) Documentation made generally available to Customer; (iii) Updates; and (iv) Upgrades to the foregoing that the Service Provider make generally available for the Service provided to the Customer

“Statement of Work” or (“SOW”) means a document that identifies the agreed upon training and implementation services to be provided by Service Provider in connection with the Services. To become effective, each SOW is governed by this Agreement, and shall be duly executed by authorized representatives of each party..

“Subscription Fees” means the fees payable to Service Provider by Customer, as set forth in “Schedule C—Order Form” entitling Customer the right to use of the Services and the Software during the Subscription Term.

“Supplemental Schedule” means any new schedule (including additional Order Forms) appended to this Agreement or as otherwise agreed by the parties from time to time, each of which shall be governed by this Agreement and is subsequently attached to this Agreement.

“Subscription Term” means the duration of the Services and the license for the Software as set forth in “Schedule C”, beginning on the date of execution of this Agreement and each renewal term, if any.

“Updates” means a Software error correction, a Software patch, or bug fix for the Services and Software and made generally available by Service Provider.

“Upgrades” means Services and Software enhancements and improvements that have been developed by Service Provider and made generally available by Service Provider.

“User” or **“Users”** means authorized users of the Services and Software, as otherwise set forth in an Order Form. Users authorized by Customer shall be limited to employees, contractors, consultants or agents of Customer, who access and use the Services and Software solely in connection with Customer’s internal business operations, and not for the benefit of a third party.

2. Effective Date

Subject to Section 14 (“**Term and Termination**”), this Agreement will become effective on the Effective Date and will remain in effect for the duration of the Services Subscription Term (as set forth in an Order Form), or as otherwise set forth hereunder. Any Supplemental Schedule will come into effect upon execution by the parties and shall be incorporated by reference and subject to the terms and conditions of this Agreement.

3. Service Level Agreement

Service Provider will (a) make the Services available to Customer pursuant to this Agreement and the applicable Order Form(s), (b) provide standard support for the Services to Customer at no additional charge, and (c) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (i) planned downtime as defined in the attached **Exhibit B**, and (ii) any unavailability caused by circumstances beyond Service Provider’s reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than incidents involving Service Provider’s employees), Internet service provider failure or delay, unavailability caused third party applications not provided by Service Provider, or denial of service attack.

4. Software License

4.1. Grant of License: Subject to Customer’s payment of all Subscription Fees due and payable hereunder, Service Provider grants to Customer for the duration of the Subscription Term a limited, non-exclusive, worldwide, non-transferable and non-assignable (except as set forth in Section 16.2 below), revocable (pursuant to Section 15.3) license as follows:

- 4.1.1 To use and access the Services specified in the Order Form strictly in accordance with the Agreement and the Documentation, for the quantity of Users designated in the Order Form and only in connection with Customer’s internal business purposes. Customer shall be responsible for its Users’ compliance with the provisions of the Agreement including this Section 4.1 and Section 11 (Confidentiality) below. For the purposes of this Section 4.1.1, Customer “internal business purposes” is defined as, and limited to, loading Customer Data into the Services using Extract Scripts, and using and accessing the Software for and on behalf of Customer and its internal business operations, and not for the benefit of third parties or Customer’s “customers”.
- 4.1.2 To use Customer Extract Scripts to create Extracts exclusively involving Customer Data, and to load that Customer Data into the Services;

4.1.3 To prepare reports and perform analytic queries of the Customer Data using Service Provider's standard report templates and "dashboards", and

4.1.3 To use and access Updates and Upgrades of the Software that Service Provider makes generally available to its customers.

4.2. Restrictions: In addition to any other restriction contained in this Agreement, Customer shall not: (a) Make any Service available to, or use any Service for the benefit of, anyone other than Customer or its authorized Users, (b) sell, resell, license, sublicense, distribute, rent or lease any Service, or include any Service in a service bureau or outsourcing offering for the benefit of any third party, (c) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service to store or transmit malicious code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or its related systems or networks, (g) permit direct or indirect access to or use of any Service in a way that circumvents a contractual usage limit, (h) copy a Service or any part, feature, function or user interface thereof, (i) frame or mirror any part of any Service, other than framing on Customer's own intranets or otherwise for Customer's own internal business purposes, (k) access any Service in order to build a competitive product or service, or (l) reverse engineer any Service, and (m) modify, translate, adapt or create derivative works of the Documentation.

4.3. Reservation of Rights: Service Provider hereby reserves any and all rights in the Services, Software and Documentation not specifically granted to Customer hereunder. Service Provider reserves the right to suspend Customer's use and access to the Services for any violation or threatened violation of Section 4.2 above, and will promptly reinstate the Services once the violation is no longer occurring.

5. Other Restrictions

5.1. Non-Hiring of Employees: No party will solicit for employment to the other party's employees who perform or involved in implementation, training or provisioning Services hereunder during the Subscription Term and for one (1) year thereafter, provided that passive solicitation (such as through employment listings not directed at employees of the other party) shall not be deemed a violation of this Section 5.1.

5.2. Use of Service Provider's Name without Prior Written Consent. Customer agrees not to use Supplier's name in any external communication, in any media or format, without express written prior authorization from Supplier.

5.3. Right to Change the Service Name. Customer understands and agrees that the Service Provider reserves the right to change the name of the Service at any time with a written notice ninety (90)

days prior to changing the name. Any name change will not affect the features and functionality of the Services.

- 5.4. Archive Data:** Customer understands and agrees that the Service Provider will archive all Customer Data when either the Customer Data has resided in the Services for more than two (2) years or when the size of the database holding the Customer Data exceeds twenty (20) Gigabytes (“GBs”). Such archive Customer Data will be available as unit history in archive files, and may be made available to Customer upon written request.

6. Maintenance and Support (“M & S”)

In exchange for Customer’s payment of applicable Subscription Fees, Service Provider shall provide ongoing standard-level Maintenance and Support (“M&S”) Services for the Software and the Services during the applicable Subscription Term in accordance with the attached Schedule A, as such M&S Service may be modified from time to time during the Subscription Term.

6.1. Additional Services: Customer may request, and Service Provider may agree to provide other services including implementation and training services during the Subscription Term as otherwise set forth in a duly executed SOW.

6.2. Upgrades: Customer understands and agrees that the Service Provider can upgrade the Services to include new and additional features and functionality that involve new Service systems requirements with prior written notice of ninety (90) days prior to the actual Upgrade implementation. During this ninety (90) day Upgrade window, Customer agrees to participate in testing and user acceptance of the Services using new or modified minimum system requirements.

7. Supplemental Schedules; Ordering Procedure

7.1. Supplemental Schedules: Customer may add additional Software or User licenses to Customer’s implementation of the Services through one or more additional fully executed Order Forms, substantially as set forth in the attached “Schedule C—Order Form”.

7.2. Changes: During the Subscription Term and subject to the terms of Section 7.1 and the Order Form(s), Service Provider may elect to modify its Software, change M&S fees (including by offering “premium level” M&S Services, Subscription Fees or terms or use for the purpose of either (i) adding new Software products or Service offerings made generally available to its other customers, or (ii) reflecting then-current policies and procedures including modifying the terms of use, provided that (a) such changes do not materially diminish the functionality of the Software provided; (b) any such changes shall apply only to future Subscription Terms for

Software and M&S Services, and (c) Service Provider provides at least ninety (90) days prior written notice to Customer regarding such changes.

8. Ownership

8.1. Service Provider Ownership: Customer acknowledges that, except for the Subscription licenses to the Services granted under this Agreement, Service Provider retains all right, title and interest (including, without limitation, all copyright) in and to the Services and the Software and any modification, translation or adaption or any other improvement or development of the foregoing, and that Customer shall gain no right, title or interest in or to the Services or the Software other than the non-exclusive right of use granted herein.

8.2. Feedback. From time to time, Service Provider may request that Customer provide Service Provider with verbal and/or written suggestions, comments or other feedback related to Service Provider's existing or prospective Services and Software, including, without limitation, design input, and troubleshooting or other assistance provided in response to support requests (collectively, "**Feedback**"). Customer and its Users are not obligated to provide Service Provider with Feedback. Customer hereby assigns to Service Provider all right, title and interest in and to such Feedback. All Feedback is provided "AS IS." Customer make no warranties whatsoever about any Feedback.

8.3. Customer Ownership: Service Provider acknowledges that Customer retains all rights, title and interest in and to the Customer Data and Customer Extract Scripts, as well as any other data contained in the Services or Software, and that Service Provider gains no interest therein, other than the necessary rights to enable Service Provider to use Customer Data and the Customer Extract Scripts to fulfill Service Provider's obligations under this Agreement and for general operational analysis.

9. Publicity / Marketing: Customer agrees to participate in press releases and similar public statements to this Agreement without prior written consent. Customer also agrees to participate in case studies, site visit and reference calls with Service Provider prospects, research agencies and the like upon Service Provider's written request within three (3) business days.

10. Payment

10.1. All Subscription Fees are due and payable as specified in Schedule C—Order Form. Payment shall be made in full without any deduction for any sales, withholding, use or other taxes or similar charges, which shall be borne exclusively by Customer and, to the extent required by applicable law, collected by Service Provider from Customer. All fees and payments under this Agreement shall be payable in US Dollars.

10.2. Payment Terms. Customer agrees to pay all invoices issued pursuant to this Agreement thirty (30) days from the date of receipt of each invoice or as otherwise agreed under an Order Form.

10.3. Taxes: Unless otherwise set forth in the Order Form, Service Provider's Subscription Fees do not include any Taxes, levies, duties or similar governmental assessments of any nature, including but limited to value added, sales and use, or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with the Services and any other services Service Provider provides pursuant to this Agreement, excluding any Taxes in connection with Service Provider's income, property and employees. If Service Provider has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section 10.3, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Service Provider with a valid tax exemption certificate authorized by the appropriate taxing authority.

10.4. Additional Subscription Fees.

- a. If required, the parties shall negotiate and execute one or more additional Order Forms to add User licenses in excess of those specified in Schedule C to this Agreement. The new Order Form shall specify the new incremental monthly Subscription Fees for the additional User licenses. The Subscription Term of each additional User license added following the effective date of this Agreement shall be coterminous with the Subscription Term specified in the applicable Order Form (the "**Initial Term**")
- b. Upon the expiration of the Initial Term, Customer will have the option to renew the User licenses then in effect for a new Subscription Term as set forth in a new Order Form ("**Renewal Term**") by providing Service Provider no less than sixty (60) days prior written notice prior the expiration of the Initial Term. The parties shall negotiate new Subscription Fees for the Renewal Term during the sixty (60) day period prior to the end of the Initial Term.
- c. Late Payment. Service Provider reserves the right to suspend Customer use and access to the Services if Subscription Fee payments are more than fifteen (15) days in arrears from the applicable due date, and the Service will no longer be accessible. Upon receipt of the overdue payment, Service Provider will reinstate the Service.

11. Confidentiality

11.1. Definition of Confidential Information: As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the

circumstances of disclosure. Customer Confidential Information shall include Customer Data; Service Provider Confidential Information shall include the Services, Software and Documentation; and Confidential Information of each party shall include the terms and conditions of this Agreement and each Order Form, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by or for the Receiving Party without use of, or reference to, the Disclosing Party's Confidential Information.

11.2. Protection of Confidential Information. The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than its affiliates and their legal counsel and accountants without the other party's prior written consent.

11.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

11.4. Injunctive Relief Authorized. Any material breach of this Section by a party or its representatives may cause irreparable injury and the non-breaching party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach. The above will not be construed to limit the remedies available to a party. In addition, the

prevailing party will be entitled to be reimbursed for all of its reasonable attorneys' fees and expenses at all levels of proceedings and for investigations, from the non-prevailing party.

12. Warranties and Disclaimers

12.1. Service Provider Warranties: Service Provider warrants that Service Provider has the legal power to enter into this Agreement, and that: (i) the unmodified Services will materially conform to the relevant feature and functionality descriptions set forth in the Documentation; and (ii) any other services will be performed by Service Provider in a competent and workmanlike manner in accordance with generally accepted industry standards.

12.2. Customer Warranties: Customer warrants that Customer has the legal power to enter into this Agreement, and shall comply with all applicable laws with respect to its use and access of the Services.

12.3. Disclaimer of Additional Warranties: EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, SERVICE PROVIDER DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH REGARD TO THE PRODUCTS OR SERVICES FROM THIRD PARTIES AND ASSUMES NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO THE APPROPRIATENESS OF CUSTOMER'S MANUFACTURING OR SUPPLY CHAIN ERP SYSTEM OR THE ACCURACY OF DATA CONTAINED IN SUCH SYSTEM.

13. Indemnification

13.1. Indemnification by Service Provider; Service Provider shall defend Customer against any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the use of the Services or the Software as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a "**Claim Against Customer**"), and shall indemnify Customer for any damages, attorney fees and costs finally awarded against Customer as a result of, and for amounts paid by Customer under a court-approved settlement of, a Claim Against Customer; provided that Customer (a) promptly gives Service Provider written notice of the Claim Against Customer; (b) give Service Provider sole control of the defense and settlement of the Claim Against Customer (provided that Service Provider may not settle any Claim Against Customer unless the settlement unconditionally releases Customer of all liability); and (c) provides to Service Provider all reasonable assistance. In the event of a Claim Against Customer, or if Service Provider reasonably believes there exists a Claim Against Customer,

Service Provider may, in Service Provider's reasonable discretion and at no cost to Customer: (i) modify the Services or the Software so that they no longer infringe or misappropriate, without breaching any Service Provider warranties, (ii) obtain a license for Customer's continued use of the Services and the Software in accordance with this Agreement, or (iii) terminate Customer User licenses for such Services and Software upon prompt written notice and refund to Customer any prepaid, unused Subscription Fees covering the remainder of the Subscription Term of such User licenses after the effective date of such termination.

13.2. Indemnification by Customer: Customer shall defend Service Provider against any claim, demand, suit or proceeding made or brought against Service Provider by a third party alleging that Customer Data and Customer Extract Scripts, or Customer use of the Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a "**Claim Against Service Provider**"), and shall indemnify Service Provider for any damages, attorney fees and costs finally awarded against Service Provider as a result of, or for any amounts paid by Service Provider under a court-approved settlement of, a Claim Against Service Provider; provided that Service Provider (a) promptly gives Customer written notice of the Claim Against Service Provider; (b) gives Customer sole control of the defense and settlement of the Claim Against Service Provider (provided that Customer may not settle any Claim Against Service Provider unless the settlement unconditionally releases Service Provider of all liability); and (c) provides to Customer all reasonable assistance.

13.3. Exclusive Remedy. This Section 12 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claims described in this Section 13.

14. Limitation of Liability

14.1. Limitation of Liability: EXCEPT FOR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 13, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO SERVICE PROVIDER UNDER THE APPLICABLE ORDER FORM IN THE 12 MONTHS PRECEDING THE INCIDENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) GIVING RISE TO SUCH LIABILITY. THE FOREGOING SHALL NOT LIMIT CUSTOMER PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES).

14.2. Exclusion of Certain Damages: EXCEPT FOR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 13, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS HOWSOEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SERVICE PROVIDER BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE SERVICES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

15. Term And Termination

15.1. Term of Agreement. This Agreement commences on the effective date stated herein and continues until all Services described hereunder and in Order Form have expired or have been terminated.

15.2. Termination by Customer: Customer may terminate this Agreement immediately upon notice in the event that Service Provider; (a) breaches any material term of this Agreement and has not cured or taken reasonable steps to cure such breach within thirty (30) days of being notified in writing of such breach, (b) breaches any material term of this Agreement which cannot be cured, or (c) is subject to any bankruptcy, receivership, or similar proceedings.

15.3. Termination by Service Provider: Service Provider may terminate this Agreement immediately with written notice in the event that Customer: (a) breaches any material term of this Agreement and has not cured or taken reasonable steps to cure such breach within thirty (30) days of being notified in writing of such breach, (b) breaches any material term of this Agreement which cannot be cured, or (c) is subject to any bankruptcy, receivership, or similar proceedings.

15.4. Refund or Payment upon Termination: Upon any termination for cause by Customer, Service Provider shall refund Customer any prepaid, unused Subscription Fees covering the remainder of the Subscription Term after the effective date of termination. Upon any termination for cause by Service Provider, Customer shall pay any unpaid Subscription Fees covering the remainder of the Subscription Term of all active Order Forms after the effective date of termination. In no event shall any termination relieve Customer of the obligation to pay all Subscription Fees payable to Service Provider for the period prior to the effective date of termination, and any other fees for services performed prior to the effective date of termination.

15.5. Return of Customer Data: Upon written request by Customer made within 30 days after the effective date of termination of the Services, Service Provider shall make Customer Data available to Customer for retrieval, and shall thereafter have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, delete all Customer Data in Service Provider systems (except electronic copies required for backup, disaster recovery, or business continuity and in such case the confidentiality obligations hereunder shall survive until such copies are destroyed).

15.6. Surviving Provisions: The following provisions of this Agreement shall survive any termination or expiration of this Agreement, unless and until waived expressly in writing by the party to whom they are of benefit: Sections 1 (Definitions), 8 (Ownership), 10 (Payment), 11

(Confidentiality), 12 (Warranty), 13 (Indemnification), 14 (Limitation of Liability), 15 (Term and Termination), and 16 (General Provisions).

16. General Provisions

16.1. Entire Agreement and Order of Precedence. This Agreement is the entire agreement between Service Provider and Customer regarding Customer's use of Services and Software and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in a purchase order or in any other of Customer's order documentation shall have no effect and are void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the Order Form, (2) this Agreement and schedules hereto, and (3) the Documentation.

16.2. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety, without the other party's consent to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

16.3. Export Compliance: Each party shall comply with the export laws and regulations of United States and other applicable jurisdictions in providing and using the Service. Without limiting the foregoing, (i) Each of Service Provider and Customer represents that it is not named on any United States Government's list of persons or entities prohibited from receiving exports, and (ii) Customer shall not permit users to access or use Services in violation of any United States export embargo, prohibition or restriction.

16.4. Relationship of the Parties: The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

16.5. No Third Party Beneficiaries: There are no third party beneficiaries to the Agreement.

16.6. Severability: If any provision of this Agreement is determined to be invalid, illegal or unenforceable in whole or in part, then the invalid, illegal or unenforceable provision shall be

modified and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

16.7. Governing Law: The parties shall attempt to resolve any disputes between them arising out of this Agreement through good faith negotiations. In the event the parties cannot resolve a dispute, the parties acknowledge and agree that the state courts of Santa Clara County, California and the federal courts located in the Northern District of the State of California shall have exclusive jurisdiction and venue to adjudicate any and all disputes arising out of or in connection with this Agreement. The parties consent to the exercise by such courts of personal jurisdiction over them and each party waives any objection it might otherwise have to venue, personal jurisdiction, inconvenience of forum, and any similar or related doctrine. This Agreement shall be construed in accordance with the substantive laws of the State of California (excluding its conflicts of laws principles). The provisions of the United Nations Conventions on Contracts for the International Sale of Goods shall not apply to this Agreement. The prevailing party shall be entitled to recover its costs and reasonable attorney's fees from the non-prevailing party in any action brought to enforce this Agreement.

SCHEDULE A MAINTENANCE & SUPPORT (M & S)

General

Service Provider shall provide M&S support directly to Customer, provided, that Customer is current with payments and remains an active subscriber of the Service. Customer is responsible for providing directly support to its Users, and Customer can submit cases by calling Service Provider's Customer support phone number ("Case"). Customer is entitled to authorize two (2) members of Customer's organization to call Service Provider's Customer Support ("Authorized Contacts"). Those Authorized Contacts will be asked to provide their company name and contact information, and each case will be assigned a unique case number. Service Provider will use commercially reasonable efforts to promptly respond to each case based on priority levels specified in the Section titled "Severity and Response Times". Service Provider will make reasonable efforts to resolve each case quickly. Actual resolution time will depend on the nature of the case. A resolution may consist of a fix, a workaround, or other solution in Service Provider's reasonable determination.

Telephone Support Hours

Standard telephone and email support is 24 hours a day, 5 days a week. Weekends and US Holidays excluded. (time based on US Central Time Zone, Support may be reached by use of phone, email, or website.

- Emails: support@42-q.com
- Call: +1 256.882.4200
- <https://support.42-q.com/login> (available 24/7)

Excluded Items

Support does not include any of the following:

- Assistance in developing User-specific customizations
- Assistance with other products, services or technologies, including implementation, administration or use of third party enabling technologies such as databases, computer networks or communication systems.
- Assistance with installation or configuration of hardware
- Development of Customer Extract Script or any issue with respect to accessing the source of the Customer Data.

Logging a Case

Only the Registered User Account has authorization to log cases in Customer Support (via Customer Support phone number or Portal).

Cooperation and Reviews

Service Provider must be able to reproduce errors in order to resolve them, and Customer agrees to cooperate and work closely with Service Provider to reproduce errors, including conducting diagnostic or troubleshooting activities as requested and appropriate. Subject to Customer's system security policies, Authorized Contacts may also be asked to provide remote access to the Software application and/or desktop system for troubleshooting purposes.

Severity and Response Times

All Cases will be assigned a severity level and the response to open cases will depend based on severity, specifics of which are provided below:

Severity	Description	Response time
Level – 1 Critical	Critical production issues affecting all Users, including system unavailability, or bugs having a significant revenue impact. Resolution required immediately.	Initial response within 4 hours of reporting the incident
Level – 2 Urgent	Major functionality is impacted or significant degradation is experienced. Issue is persistent and affects many Users and/or major functionality. Resolution required as soon as reasonably possible.	Initial response within 12 hours of reporting the incident
Level – 3 Normal	Systems performance issue or bug affecting some but not all Users.	Initial response within 3 business days of reporting the incident

Escalation Matrix

The following Table outlines the escalation contacts available to Customer, as necessary.

	Title
1 st Level	Designated Account Specialist
2 nd Level	Manager, Customer Support
3 rd Level	Director / Sr. Director / VP, Information Technology
4 th Level	SVP & CIO, Information Technology

SCHEDULE B SERVICE LEVEL AGREEMENT

This Schedule B Service Level Agreement (“SLA”) is subject to and made a part of the attached Master Subscription Services Agreement (“the Agreement”)

Availability: Service Provider shall make the Services available 98% (“SLA Commitment”) or greater of the time in each calendar year. Availability is calculated as follows:

Availability % = ((total system functional time + total planned downtime hours + downtime exclusion hours) / total hours)*100

Downtime: For any planned downtime and system maintenance, Service Provider shall provide a seventy-two (72) hour prior notice to Customer’s Authorized Contacts. General maintenance window will be scheduled on the second weekend of each month for 12 hours between 6.00am and 6.00pm Pacific standard time on a Sunday.

Disaster Recovery: Service Provider has disaster recovery plans in place and tests them at least once per year. Service Provider will discuss results of these tests with Customer on request.

System Changes and Enhancements: Service Provider plans to enhance and maintain the Services during the Subscription Term of the Agreement. Security controls, procedures, policies and features may be changed or be added. Service Provider will provide security controls that deliver a level of security protection that is not materially lower than that provided as of the effective date of the Order Form.

Remedies: Should Service Provider fail to make the Services available pursuant to the SLA Commitment during any calendar quarter as measured by Service Provider, Customer may continue to use the Services but will receive a Service credit of one (1) full day (based on a prorated calculation of the Subscription Service Fees) for each active User subscription using the affected Services in that quarter, for each full or partial hour of Services unavailability. Service Provider shall use commercially reasonable efforts to make issue such Service credits within 30 days of the end of such calendar quarter (which shall be applied to the next applicable invoice). Should Service Provider fail to make the Services available as set forth herein in two (2) consecutive calendar quarters, Customer may, in lieu of receiving the above-described credit, terminate the Agreement by providing notice of termination, in which case (i) Service Provider will timely refund to Customer any prepaid, unused Subscription Fees for the remainder of the Services Subscription Term following the date of termination; (ii) thereafter Service Provider shall use commercially reasonable efforts to issue a refund within 30 days of the effective date of such termination; (iii) Customer shall have no obligation to pay unpaid Subscription Fees covering the remainder of the Term after the effective date of such termination. The remedies described in this paragraph shall be the sole and exclusive remedies available to Customer for breach of this SLA Commitment.



Reporting, Claims and Notices: To claim a Remedy under this SLA, Customer shall send to Service Provider a notice, via email addressed to support@42-q.com containing the following details:

- Billing information, including Customer name, billing address, billing contact and billing phone number.
- Downtime information with dates and time periods for each instance of downtime during relevant period.
- An explanation of the claim, including any relevant calculations.

Claims may be made on a quarter basis only and must be submitted within ten (10) business days after the end of the applicable quarter. All claims shall be verified against Service Provider System records. Should Service Provider dispute any period of unavailability for the applicable period, Service Provider shall provide to Customer a record of Services availability for the applicable period. Service Provider will provide such records only in response to claims made by Customer in good faith.

General: Service Provider shall have no obligations under this SLA during any period in which Customer is in material breach of the Agreement, including any period in which Customer has failed to meet its payment obligations.

**SCHEDULE C
ORDER FORM****1. Fees**

The Fees for this agreement is a fixed at \$25k for the Term (3 months).

Software / Modules	Monthly Subscription Fee
Number of Mfg Locations	1
Module: MES101	Included
Module: Business Intelligence	Included (42Q Live & Ops Dashboards)
10 Clients (Workstation, Users, Digital Signage included)	Included

2. Term:

- a. This is a month-to-month term from the AWS Marketplace Subscribe Date. 42Q requires customers to subscribe for at least a period of three (3) months in order to have a full Proof of Concept (PoC) experience of the Digital Factory Starter Kit solution.

3. Additional Terms and Conditions:

- a. Upon execution of this Order Form by both parties, Service Provider will invoice Customer for the Fees immediately. Customer understands and agrees that the Purchase Order for the Services in the amount specified by Fees will be provided to the Service Provider upon execution of this agreement. Customer also understands that the Service Provider will not initiate the services until the Purchase Order is received by the Service Provider. In the event, where a Purchase Order from the Customer is not required, Customer agrees that the execution of this Agreement constitutes the authorization to initiate the Service. Customer shall pay invoices as per Section 10 of the Agreement
- b. This Order Form is a firm, non-cancellable commitment from Customer. Service Provider may reference Customer's purchase order number on Service Provider invoices, if any.
- c. This Order Form may be signed in any number of counterparts, including by fax or sent by way of PDF, and when so executed shall be a fully signed and valid agreement between the parties.