

MASTER SOFTWARE AS A SERVICE AGREEMENT

This Master Software as a Service Agreement ("**Agreement**") is made as of [____], 20[___] (the **Effective Date**), between **ActionIQ, Inc.**, a Delaware corporation having its address at PO Box 2648, New York, NY 10009 ("**Provider**", "**ActionIQ**" or "**AIQ**") and [____], a [____] with principal offices at [____] ("**Customer**").

1. DEFINITIONS.

"Affiliates" means (a) an entity of which a party directly or indirectly owns fifty percent (50%) or more of the stock or other equity interest, (b) an entity that owns at least fifty percent (50%) or more of the stock or other equity interest of a party, or (c) an entity which is under common control with a party by having at least fifty percent (50%) or more of the stock or other equity interest of such entity and a party owned by the same person, but such entity shall only be deemed to be an Affiliate so long as such ownership exists.

"Customer Data" means all data, information, and other materials submitted by Customer to the Services.

"Documentation" means any user guide, help information and other documentation and information regarding the Services that is delivered by Provider to Customer in electronic or other form, if any, including any updates provided by Provider from time to time.

"Platform" means Provider's user interface platform.

"Services" means the products and services, including the Platform, made available by Provider to Customer as may be mutually agreed to by the parties in an Order Form.

2. PROVIDER SERVICES.

2.1 Order Forms. This Agreement will be implemented through one or more written orders that reference this Agreement and contain such information as generally illustrated and attached hereto as **Exhibit A (Order Forms)**. Any change to the terms of this Agreement within an Order Form will apply only to the Services described therein. Provider may provide the Services directly, or indirectly using contractors or other third party vendors or service providers. Customer may enter into Order Forms on behalf of its Affiliates, provided that Customer shall remain responsible and liable for all obligations under such Order Forms.

2.2 Services. Subject to all terms and conditions of this Agreement, Provider will provide the Services described in an applicable Order Form. Provider grants Customer a non-exclusive, non-transferable, non-sublicensable right and license to use the Services and access the Platform solely for Customer's internal business purposes in accordance with the Documentation for the applicable term of the Order Form. For clarity, the Services are provided on a software-as-a-service basis.

2.3 Account Access. Provider will provide Customer with access privileges that permit Customer to access and manage its Platform account ("**Customer Account**") and access, analyze and download Customer Data. Customer is solely responsible for the activity that occurs on the Customer Account, and for keeping the Customer Account password secure. Customer may never use another person's user account or registration information for Provider's Services without permission. Customer must notify Provider immediately of any change in Customer's eligibility to use Provider's Services, and of any discovered or otherwise suspected Customer's breach of security or unauthorized use of the Customer

Account. Customer shall be responsible and liable for the acts or omissions of any person who accesses the Platform using passwords or access procedures provided to or created by Customer.

2.4 Implementation Services. Provider will use commercially reasonable efforts to provide Customer with the implementation services as described in the Statement of Work ("**SOW**"), attached as **Exhibit B** hereto ("**Implementation Services**"). The Customer shall pay Provider the Implementation Services fee as detailed in the applicable Order Form and SOW.

2.5 Service Level Agreement. Provided that Customer is in compliance with the terms and conditions of this Agreement, Provider shall use commercially reasonable efforts to provide the Services in accordance with the Service Level Agreement attached as **Exhibit C**.

2.6 Modifications. Provider reserves the right to modify or discontinue the Platform (in whole or in part) at any time by giving thirty (30) days' prior written notice to Customer, provided that in the event such modification or discontinuance materially reduces the functionality of the Platform in accordance with this Agreement, Customer may terminate this Agreement upon at least fifteen (15) days' prior written notice to Provider and receive a pro-rated refund of any pre-paid unused subscription fees. If Provider provides Customer with any upgrades, patches, enhancements, or fixes for Provider's Services, then the items that are provided will become part of Provider's Services and subject to this Agreement. However, Provider shall have no obligation under this Agreement to provide any upgrades, patches, enhancements, or fixes to Customer for Provider's Services.

2.7 Feedback. All Customer (i) suggestions for correction, change or modification to the Platform, (ii) evaluations, (iii) benchmark tests, and (iv) other feedback, information and reports provided to Provider hereunder (collectively, "**Feedback**"), will be the property of Provider and Customer shall and hereby does assign any rights in such Feedback to Provider. Customer agrees to assist Provider, at Provider's expense, in obtaining intellectual property protection for such Feedback, as Provider may reasonably request.

2.8 Cooperation. Customer acknowledges that the Services may require the reasonable cooperation of Customer personnel, as may be requested by Provider from time to time. Without limiting the foregoing, where agreement, approval, acceptance, consent or similar action by Customer is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld, and Customer acknowledges that any delay or failure on the part of Customer to provide the same will relieve Provider of its obligations under any Order Form for the pendency of such delay or failure.

2.9 Customer Policies. If applicable Provider shall comply with Customer's reasonable written policies provided to Provider in advance with respect to Provider's access to Customer's networks, hardware and information technology systems in connection with the provision of Services.

2.10 Beta Services. From time to time, Provider may offer Customer to try Beta Services at no charge. Customer may accept or decline any such trial in Customer's sole discretion. Beta Services will be clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation or by a description of similar import. Beta Services are for evaluation purposes and not for production use, are not considered "Services" under this Agreement, are not supported, and may be subject to additional terms. Unless otherwise stated, any Beta Services trial period will expire upon the date that a version of the Beta Services becomes generally available. Provider may discontinue Beta Services at any time in Provider's sole discretion and may never make them generally available. PROVIDER SHALL HAVE NO LIABILITY FOR ANY HARM OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH A BETA SERVICE.

3. NON-PROVIDER SERVICES

3.1 Acquisition of Non-AIQ Products and Services. AIQ or third parties may make available third-party products or services, including, for example, third party applications and implementation, and other consulting services ("**Non-AIQ Services**"). Any acquisition by Customer of such Non-AIQ Services, and any exchange of data between Customer and any Non-AIQ Services provider, is solely between Customer and the applicable Non-AIQ Services provider. AIQ does not warrant or support Non-AIQ Services.

3.2 Non-AIQ Services and Customer Data. If Customer installs or enables a Non-AIQ Services for use with the Service, Customer grants AIQ permission to allow the provider of such Non-AIQ Services to access Customer Data as required for the interoperation of such Non-AIQ Services with the Service. AIQ is not responsible or liable for any disclosure, modification or deletion of Customer Data resulting from access by Non-AIQ Services. AIQ is not responsible or liable to Customer if Customer installs, connects, enables, uses or shares any Integration, feature, workflows, actions, or suggestions authored or made available by an entity other than AIQ.

4. PROPRIETARY RIGHTS.

4.1 Intellectual Property Rights to the Services. Except for the limited rights and licenses expressly granted to Customer hereunder, no other license or right are granted, no other use is permitted and Provider (and its licensors) shall retain all rights, title and interests (including all intellectual property and proprietary rights) in and to the Services, including all ideas, concepts, inventions, systems, platforms, software, interfaces, tools, utilities, templates, forms, techniques, methods, processes, algorithms, know-how, trade secrets and other technologies, implementations and information that are used by Provider in providing the Services, and all Provider trademarks, names, logos, all rights to patent, copyright, trade secret and other proprietary or intellectual property rights ("**Intellectual Property Rights**").

4.2 Restrictions. Except as expressly permitted in this Agreement, Customer shall not directly or indirectly (a) use any of Provider's Intellectual Property Rights and/or Confidential Information to create any service, software, documentation or data that is similar to or competes with any aspect of the Services, (b) disassemble, decompile, reverse engineer or use any other means to attempt to discover any source code of the Services, or the underlying ideas, algorithms or trade secrets therein, (c) use the Documentation for any reason other than for receiving the Services, (d) encumber, sublicense, transfer, rent, lease, time-share or use the Services in any service bureau arrangement or otherwise for the benefit of any third party, (e) copy, distribute, manufacture, adapt, create derivative works of, translate, localize, port or otherwise modify any aspect of the Services, (f) use or allow the transmission, transfer, export, re-export or other transfer of any product, technology or information it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any export control or other laws and regulations of the United States or any other relevant jurisdiction, (g) perform or attempt to perform any performance or penetration testing, including, but not limited to Approved Scanning Vendors (ASV), Black box, Grey box, White box or any of their blend or combination, or (e) permit any third party to engage in any of the foregoing proscribed acts.

5. CUSTOMER DATA.

5.1 Customer Data. Customer hereby grants to Provider a worldwide, non-exclusive, royalty-free license and right to use, copy, access, process, reproduce, perform, display, modify, distribute and transmit the Customer Data for the purpose of providing the Services to Customer. Except for the limited rights and licenses expressly granted to Provider under this Agreement, no other license is granted, no other use is permitted, and Customer shall retain all rights, title and interests (including all Intellectual Property Rights) in and to the Customer Data. Except for the limited rights and licenses expressly granted

hereunder, no other license is granted, no other use is permitted, and Customer (and its licensors) shall retain all rights, title and interest (including all Intellectual Property Rights) in and to Customer Data, which shall be deemed to be the Confidential Information (defined below) of Customer.

5.2 Aggregate Data. Customer agrees that Provider shall have a perpetual, worldwide, non-exclusive, irrevocable right and license to use, store, copy, create derivatives, archive Customer Data (i) to create anonymized compilations and analyses of Customer Data ("**Aggregate Data**"), (ii) to create reports, evaluations, benchmarking tests, studies, analyses and other work product from Aggregate Data ("**Analyses**") and (iii) to create, develop, enhance algorithms, machine learning and other generally available tools in connection with the Platform using anonymous Customer Data. Provider shall have exclusive ownership rights to, and the exclusive right to use, such Aggregate Data and Analyses for any purpose, including, but not limited to product improvement and marketing to other customers of the Services; provided, however, that Provider shall not distribute Aggregate Data and Analyses in a manner that is identifiable as Customer Data.

5.3 To the extent that, in connection with the Platform or Services, Customer provides any Customer Data that contains "Personal Data" or "Personal Information", Provider will process and maintain Customer Data consistent with its Data Processing Addendum, which is attached at **Exhibit D** and hereby incorporated by reference (the "**DPA**").

6. CONFIDENTIALITY.

6.1 Confidentiality Obligations. During the term of this Agreement, from time to time, either party may disclose ("**Disclosing Party**") or make available to the other party ("**Receiving Party**"), whether orally, electronically or in physical form, confidential or proprietary information concerning the Disclosing Party and/or its business, products or services in connection with this Agreement (together, "**Confidential Information**"). Confidential Information of each party includes, without limitation, business plans, customer relationships, acquisition plans, systems architecture, information systems, computer programs and codes, processes, methods, operational procedures, finances, budgets, policies and procedures, product plans, projections, analyses, plans or results, the existence of any business dealings or agreements between Customer and Provider, and any other information which is normally and reasonably considered confidential. Each party agrees that during the term of this Agreement and thereafter: (a) it will use Confidential Information belonging to the Disclosing Party solely for the purposes of this Agreement; and (b) it will not disclose Confidential Information belonging to the Disclosing Party to any third party (other than the Receiving Party's employees, contractors and/or professional advisors on a need-to-know basis who are bound by obligations of nondisclosure and limited use at least as stringent as those contained herein) without first obtaining the Disclosing Party's written consent. Upon request by the Disclosing Party, the Receiving Party will return all copies of any Confidential Information to the Disclosing Party.

6.2 Confidentiality Exclusions. For purposes hereof, Confidential Information will not include any information that the Receiving Party can establish by convincing written evidence: (a) was previously known by the Receiving Party; (b) was independently developed by the Receiving Party without use of or reference to any Confidential Information belonging to the Disclosing Party; (c) was acquired by the Receiving Party from a third party having the legal right to furnish same to the Receiving Party without disclosure restrictions; or (d) was at the time in question (whether at disclosure or thereafter) generally known by or available to the public (through no fault of the Receiving Party).

6.3 Required Disclosures. Nothing herein shall prevent a Receiving Party from disclosing any Confidential Information as necessary pursuant to any court order, lawful requirement of a governmental agency or when disclosure is required by operation of law (including disclosures pursuant to any applicable securities laws and regulations); provided that prior to any such disclosure, the Receiving Party

shall use reasonable efforts to (i) promptly notify the Disclosing Party in writing of such requirement to disclose and (ii) cooperate with the Disclosing Party in protecting against or minimizing any such disclosure or obtaining a protective order.

6.4 Injunctive Relief. The parties acknowledge and agree that the disclosure of Confidential Information may result in irreparable harm for which there is no adequate remedy at law. The parties therefore agree that the Disclosing Party may be entitled to seek an injunction in the event the Receiving Party violates or threatens to violate the provisions of this Section 4, and that no bond will be required. This remedy will be in addition to any other remedy available at law or equity.

7. PAYMENTS.

7.1 Fees. Customer agrees to pay Provider all fees and expenses in the amounts and at the times specified in the applicable Order Form (the **Fees**).

7.2 Taxes. Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, 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 under this Agreement and all Order Forms, excluding Taxes based solely on Provider's net income. If Provider is deemed to have the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Provider with a valid tax exemption certificate authorized by the appropriate taxing authority.

7.3 Payment Terms. Unless specified otherwise or subject to a good faith dispute, and except as may be otherwise set forth in an Order Form, all amounts due hereunder shall be paid in full (without deduction, set-off or counterclaim) within thirty (30) days following the invoice.

7.4 Expenses. Where indicated on an applicable Order Form, Customer agrees to pay all of Provider's out of pocket costs and expenses incurred by Provider in the performance of its obligations under this Agreement including, without limitation, amounts incurred for air fare, travel, automobile rental, accommodations and an employee per diem.

7.5 Future Functionality. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

8. WARRANTIES AND DISCLAIMERS.

8.1 General. Each party represents and warrants that: (a) it is a duly organized and validly existing under the laws of the jurisdiction in which it is organized; (b) it has full power and authority, and has obtained all approvals, permissions and consents necessary, to enter into this Agreement, to perform its obligations and to grant the rights hereunder; (c) this Agreement is legally binding upon it and enforceable in accordance with its terms; and (d) the execution, delivery and performance of this Agreement does not and will not conflict with any agreement, instrument, judgment or understanding, oral or written, to which it is a party or by which it may be bound.

8.2 Customer. Customer represents and warrants to Provider that Customer shall (a) be responsible and liable for the Customer Account and for all activities that occur through Customer use of the Services, (b) access and use the Services only in accordance with this Agreement and applicable laws and government regulations, (c) be responsible and liable for the accuracy, quality and legality of Customer

Data and shall have all other rights as may be necessary to permit the access, use and distribution of Customer Data as contemplated by this Agreement.

8.3 Provider.

(a) Services Warranty. Provider warrants that the Services will operate materially in accordance with the Documentation during the term of the applicable Order Form.

(b) Other Warranties. Provider warrants that: (i) it will perform the Services in compliance with all applicable laws, rules and regulations; and (ii) it uses industry standard methods to scan the Services for viruses, Trojan horse, and other harmful code.

8.4 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, PROVIDER DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR RESULT IN ANY OUTCOME, OR THAT THEIR OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE. TO THE FULLEST EXTENT PERMITTED BY LAW, PROVIDER HEREBY DISCLAIMS (FOR ITSELF AND ITS SUPPLIERS) ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, INTEGRATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

9. INDEMNIFICATION.

9.1 Provider.

(a) Indemnity. Except as provided below, Provider agrees to defend Customer against any claim by a third party that the Services infringe a valid US patent (issued as of the Order Effective Date), or any copyright or trade secret, of such third party and indemnify Customer for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of such claim. If the Services become or, in Provider's opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, Provider may, at its option (i) obtain for Customer the right to continue using the Services or (ii) replace or modify the infringing portions of the Services so that it becomes non-infringing without substantially compromising its principal functions. If (i) and (ii) are not reasonably available to Provider, then it may (iii) terminate this Agreement upon written notice to Customer and refund to Customer any Fees for the Services that were pre-paid for the then-current term, pro-rated for the remainder thereof. The foregoing states the entire liability of Provider, and Customer's exclusive remedy, with respect to any actual or alleged violation of intellectual property rights by the Services, any part thereof or its use or operation.

(b) Exclusions. Provider shall have no liability or obligation hereunder with respect to any claim based upon (i) any use of the Services not strictly in accordance with this Agreement or in an application or environment for which it was not designed or contemplated, (ii) any Customer Data, (iii) modifications, alterations, combinations or enhancements not created by or for Provider, (iv) any portion of the Services that implements Customer's requirements, or (v) Customer's continuing allegedly infringing activity after being notified thereof or its continuing use of any version after being provided modifications that would have avoided the alleged infringement.

9.2 Customer. Customer agrees to defend Provider against any claim by a third party that is related to (i) Provider's authorized use of any Customer Data, or (ii) Customer's breach of any representation, warranty, covenant or other agreement made herein, and to indemnify Provider for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of such claims.

9.3 Procedures. Any claim for indemnification hereunder requires that (a) the indemnified party provides prompt written notice of the claim and reasonable cooperation, information, and assistance in connection therewith, and (b) the indemnifying party shall have sole control and authority to defend, settle or compromise such claim. The indemnifying party shall not make any settlement that requires a materially adverse act or admission by the indemnified party without the indemnified party's written consent (such consent not to be unreasonably delayed, conditioned or withheld). The indemnifying party shall not be liable for any settlement made without its prior written consent.

10. LIMITATION OF LIABILITY.

EXCEPT FOR ANY BREACH OF INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTION 9. OR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) LOSS OR INACCURACY OF DATA, LOSS OR INTERRUPTION OF USE, OR COST OF PROCURING SUBSTITUTE TECHNOLOGY, GOODS OR SERVICES, (B) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS AND GOODWILL OR (C) DAMAGES, IN THE AGGREGATE, IN EXCESS OF THE AMOUNTS PAID TO IT HEREUNDER DURING THE PREVIOUS 12 MONTHS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. TERM AND TERMINATION.

11.1 Term of Agreement. This Agreement shall commence on the Effective Date and, unless earlier terminated as provided herein, shall continue for three (3) years from the Effective Date, which term shall automatically renew for successive terms of one (1) year each, unless Customer notifies Provider of its intent not to renew this Agreement at least forty-five (45) days prior to the end of the applicable term.

11.2 Termination. This Agreement may be earlier terminated by either party (i) if the other party materially breaches a provision of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach from the non-breaching party, or (ii) immediately upon written notice, if the other party makes any assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of any or all of the other party's property, or the other party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding or such a proceeding is instituted against the other party and is not dismissed within 90 days, or the other party becomes insolvent or, without a successor, dissolves, liquidates or otherwise fails to operate in the ordinary course. Termination of this Agreement shall terminate all outstanding Order Forms.

9.3 Effects of Termination. Upon any expiration or termination of any Order Form or this Agreement, all corresponding rights, obligations and licenses of the parties shall cease, except that (a) all obligations that accrued prior to the effective date of termination (including without limitation, all payment obligations) shall survive; (b) Customer shall cease using the Services (if Customer continues to use the Services, then Provider reserves the right to continue to charge Customer); (c) upon Customer's request, Provider shall return all Customer Data in a format mutually agreed by the parties to the extent it is technically feasible for Provider to do so (provided that Provider may retain any Aggregate Data in its possession or control); and (d) the provisions of Sections 2.6 (Feedback), 3 (Proprietary Rights), 4 (Confidentiality), 5 (Payments), 6.4 (Disclaimers), 7 (Indemnification), 8 (Limitation of Liability), 11 (General Provisions) and this Section 9.2 shall survive.

10. GENERAL PROVISIONS.

10.3 Entire Agreement. This Agreement (including the Order Forms) constitutes the entire agreement, and supersedes all prior negotiations, understandings or agreements (oral or written), between the parties regarding the subject matter of this Agreement (and all past dealing or industry custom). Any inconsistent or additional terms on any related purchase order, confirmation or similar form, even if signed by the parties hereafter, shall have no effect under this Agreement. In the event of any conflict between the terms of this Agreement and the terms of any Order Form, the terms of the Order Form shall control. This Agreement supersedes any vendor forms, order forms, invoices, policies, or other terms and conditions provided by Customer. This Agreement may be executed in one or more counterparts, each of which shall be an original, but taken together constituting one and the same instrument. Execution of a facsimile/electronic copy shall have the same force and effect as execution of an original, and a facsimile/electronic signature shall be deemed an original and valid signature. No change, consent or waiver under this Agreement will be effective unless in writing and signed by the party against which enforcement is sought. The failure of either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. If any provision of this Agreement is determined to be illegal or unenforceable, 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. This Agreement is in English only, which language shall be controlling in all respects.

10.4 Dispute Resolution. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by mandatory confidential arbitration in New York, NY before a panel of no more than 3 arbitrators that the parties shall mutually select. The arbitration shall be administered by the American Arbitration Association (“**AAA**”) pursuant to the applicable AAA rules and procedures (“**Rules**”), and in accordance with the Expedited Procedures in the Rules. The award rendered by the arbitrator/s shall include costs of arbitration, reasonable attorneys’ fees and reasonable costs for expert and other witnesses. Judgment on the award may be entered in any court having competent jurisdiction. This Section shall not preclude either party from bringing suit in court to enjoin infringement or other misuse of intellectual property rights. All actions must be brought in the parties’ individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding.

10.5 Remedies. Except as specifically provided otherwise herein, each right and remedy in this Agreement is in addition to any other right or remedy, at law or in equity. Each party agrees that, in the event of any breach or threatened breach of Section 3 or 4, the non-breaching party will suffer irreparable damage for which it will have no adequate remedy at law. Accordingly, the non-breaching party shall be entitled to injunctive and other equitable remedies to prevent or restrain such breach or threatened breach, without the necessity of posting any bond.

10.6 Notices. All notices under this Agreement will be in writing, in English and delivered to the parties at their respective addresses stated herein or at such other address designated by written notice. Notices will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile; the day after being sent, if sent for next day delivery by recognized overnight delivery service; or upon receipt, if sent by certified or registered mail, return receipt requested.

10.7 Force Majeure. In the event that either party is prevented from performing, or is unable to perform, any of its obligations under this Agreement (except payment obligations) due to any cause

beyond its reasonable control including, without in any way limiting the generality of the foregoing, fire, explosion, earthquake, storm, flood, strike, war, insurrection, riot, act of God or the public enemy, failures in any telecommunications, network or other service or equipment that are not within a party's reasonable control, unauthorized access, breach of firewalls or other hacking by third parties, instructions of Government or other public authorities, or judgment or decree of a court of competent jurisdiction (not arising out of breach by such party of this Agreement), the affected party's performance shall be excused or extended for the period of delay or inability to perform due to such occurrence.

10.8 Publicity. Customer hereby grants Provider a limited, non-transferable (except to the extent this Agreement is transferred by Provider in accordance with Section 11.7), non-exclusive license to include Customer's name and standard logo within lists of customers utilizing Provider's services, both on Provider's public-facing website and in marketing and promotional materials.

10.9 Assignment. This Agreement and the rights and obligations hereunder may not be assigned, in whole or in part, by either party without the other party's written consent, not to be unreasonably withheld. However, without consent, Provider may assign this Agreement to (a) an Affiliate or (b) any successor to all or substantially all of its business that concerns this Agreement (whether by sale of assets or equity, merger, consolidation or otherwise). This Agreement shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of each party hereto.

10.10 Third Party Beneficiaries. This Agreement is entered into solely between, and may be enforced only by, Customer and Provider. This Agreement will not be deemed to create any rights in third parties or to create any obligations of a party to any third parties.

10.11 Independent Contractors. The parties shall be independent contractors under this Agreement, and nothing herein will constitute either party as the employer, employee, agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

10.12 Export Compliance. The Services, and other technology Provider may make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not access or use and shall not permit to access or use any Service or Customer Account in a U.S.-embargoed country or in violation of any U.S. export law or regulation.

EXHIBIT A

ORDER FORM

EXHIBIT B

STATEMENT OF WORK

EXHIBIT C

SERVICE LEVEL AGREEMENT

EXHIBIT D

DATA PROCESSING ADDENDUM