

**ASSOCIATION OF NATIONAL ADVERTISERS**  
**Template Master Services Agreement for Martech Services and Solutions**  
**VERSION 1.0: JANUARY 2021**

This Association of National Advertisers (“ANA”) Template Master Services Agreement (“**Template**”) for martech Services and Solutions is a form for ANA-member advertisers (“**Advertiser(s)**”) to use when contracting with providers or vendors (“**Provider(s)**”) of marketing technology tools, solutions, and applications (“**martech**”). This Template represents what the ANA believes to be in the best interest of advertisers and best practices for the U.S. marketplace.

There is no obligation on ANA members to use this Template. Each member is free to negotiate whatever terms and conditions such member deems appropriate. The ANA provides this Template on an AS-IS basis and makes no representations or warranties as to the content of this Template. Anyone using this Template is advised to consult with experienced legal counsel before adopting this Template in whole or in part.

The ANA would like to acknowledge the work of the VENABLE LLP law firm, particularly A.J. Zottola and Caitlyn Bingaman. Questions may be directed to Bill Tucker ([btucker@ana.net](mailto:btucker@ana.net)) or A.J. Zottola ([ajzottola@venable.com](mailto:ajzottola@venable.com)).

Please note that the suggested wording in this Template is not intended to represent the only approach by which the contractual relationship between Advertiser and Provider can be addressed. Furthermore, with more than 8,000 Providers offering different martech, there will be variety among arrangements with respect to delivery, access, utilization, rights, and data. This Template does, however, address the myriad of issues that should be considered by Advertiser in many martech arrangements, although the agreement does characterize most offerings as a “service” to be consistent with the majority of today’s Provider contracts.

Please also note that this Template has been drafted from a U.S. law perspective, although it been drafted in a manner to allow for easier reconciliation with laws, regulations, and directives of foreign jurisdictions. In particular, the data-related sections of this Template may require additional edits to comply with specific legal requirements. The ANA recommends consultation with local counsel to examine the applicable martech in use and related data and business practices and to adjust this Template as necessary to ensure compliance. In addition to review of the terms in this Template, Advertisers should be prepared to discuss the following issues with Providers:

**Definitions:** Revising and syncing terms.

**Payment:** Adjusting for particular business terms and Provider’s preference to accelerate payment.

**Services:** Addressing the particular access, delivery, schedule, acceptance, and performance requirements for the martech offering(s) in the contemplated statement of work or order.

**Contractors:** Adjusting the rights available to (or utilization of) affiliates or contractors.

**License:** Addressing the Provider’s preference for additional parameters on use of the available martech, including, without limitation, suspension or audit rights to monitor for or in the event of an alleged or actual breach.

**Advertiser Obligations:** Addressing the Provider’s preference for Advertiser to covenant to the fulfillment of additional duties or obligations in connection with access, use, or delivery of the martech.

**Indemnification:** Revising the indemnification scope and responsibilities.

**Warranties:** Revising the respective warranties and representations.

**Limitation on Liability:** Addressing the Provider’s preference for a broader limit(s) on its liability.

**Deliverables:** Addressing rights to deliverables (license or ownership) or whether the arrangement will result in any work product or deliverable(s).

**SLA:** Revising and syncing the service level terms for performance and the available remedies.

In this Template, particular wording has been bolded in brackets for consideration. In addition, this Template includes various placeholders and references to ancillary or supporting documents and should be adjusted to address the actual documents and related attachments.

## MASTER SERVICES AGREEMENT

This MASTER SERVICES AGREEMENT and any of its exhibits (this “**Agreement**”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”), by and between \_\_\_\_\_ (hereinafter “**Advertiser**”), a \_\_\_\_\_ with a principal place of business at \_\_\_\_\_, and \_\_\_\_\_ (“**Provider**”), a \_\_\_\_\_ with a principal place of business at \_\_\_\_\_. Advertiser and Provider are each a “**Party**,” and together, the “**Parties**” to this Agreement.

WHEREAS, Advertiser wishes to retain Provider to provide the Services (as described below) pursuant to the terms and conditions of this Agreement; and

WHEREAS, Provider agrees to provide such Services in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, of the mutual covenants contained herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending legally to be bound, hereby agree as follows:

1. **Definitions.** Capitalized terms not otherwise defined elsewhere in this Agreement shall have the meanings given to them below in this section.
  - 1.1. “**Advertiser Data**” means any Data provided or made available by Advertiser, whether Advertiser First-Party Data or Second-Party Data or Third-Party.
  - 1.2. “**Advertiser Material(s)**” means any advertising creative (including, without limitation, product or service descriptions, offer copy, trade names, trademarks, advertising copy, banner images, graphics, landing pages, or URLs) or other campaign, workflow, brand, product, or service information, content, documentation, or materials provided or made available to Provider by Advertiser and/or a party acting on behalf of Advertiser, including through any application program interface (API) or from Advertiser’s owned, controlled, or operated properties, namely, its web, mobile, video, streaming, TV, or other channel properties.
  - 1.3. “**Advertiser System**” means, except for the Provider Technology, Advertiser’s other information technology infrastructure, including the computers, software, equipment, databases, electronic systems (such as database management systems), networks, web (or mobile) applications, tools, or solutions, which may be used in whole or in part to manage Advertiser’s marketing activities.
  - 1.4. “**Affiliate(s)**” means, for a Party, any other entity that controls, is controlled by, or under common control with such Party, and for which “control” means the direct or indirect power to control the affairs of such other entity through at least 50 percent of the shares, voting rights, participation, or assets of the entity.
  - 1.5. “**Available**” or “**Availability**” means the ability for Provider Technology to receive requests or serve Data or content pursuant to such requests, and the ability for Advertiser to access and use the Services.
  - 1.6. “**Business Day**” means a day other than a Saturday, Sunday, or other day on which commercial banks in New York City are authorized or required by state or U.S. federal law to be closed for business.
  - 1.7. “**Data**” means all information or data (in any form or medium), which may include Personal Information (defined below), provided, made available, created, generated, processed, or collected by either Party in connection with this Agreement and which may include Advertiser Data or Provider Data and which may be further understood to mean or include the following:
    - (a) “**First-Party Data**” means any Data collected from a customer, advertisement, website, application, or platform and which may include either (a) any such Data (with respect to Provider) that is separately collected by Provider on its own behalf (without use of the Advertiser Data or Advertiser Materials and not generated through performance of the Services) (“**Provider First-Party Data**”) or (b) any such Data (with respect to Advertiser) that is collected by, on behalf of, or for Advertiser from any Advertiser

activity(ies), property(ies), or operation(s)) (“Advertiser First-Party Data”), including, without limitation, any Data about or collected from any of Advertiser’s product(s) or service(s), about or collected from Advertiser’s audience(s) or (potential or actual) customer(s), or about or collected from Advertiser’s performance, campaign, or marketing strategy, plans, or details, including those that may include Advertiser Materials.

- (b) **“Second-Party Data”** means any Data collected by a third party and provided to either Party.
  - (c) **“Third-Party Data”** means any Data compiled from a variety of sources by a third party and which is anonymized and packaged into discreet data segments and which may include data enhancements.
- 1.8. **“Deliverables”** means and includes: (a) new Advertiser First-Party Data collected by Provider by or from performance of the Services; (b) any other Data captured, created, derived, or generated by Provider from or through the Advertiser Materials or Advertiser Data; (c) any insights or analysis collected, created, or generated from performance of the Services by Provider from (i) potential or actual customers of Advertiser’s products or services, (ii) any Advertiser Data, or (iii) the functional, navigation, or monetization features or aspects of Advertiser’s (web, media, retail, or other channel) properties; and (d) any new works of authorship or design, or other copyrightable works, including documentation, storyboards, branding, source and object code, graphics, database structure, algorithms, diagrams, or customized tools (as the case may be), which Provider may conceive or develop using any Advertiser Material(s) or in the course of performing any other Services specifically, solely, or uniquely for Advertiser (or otherwise at Advertiser’s direction).
- 1.9. **“Documentation”** means all technical or usage documentation relating to or describing any aspect of the Services that are provided or made available in any form or media by Provider, such as manuals, instructions, specifications, and other materials that describe the use, operation, testing, functionality, components, features, or requirements of the Services.
- 1.10. **“Downtime”** is defined in the Service Level Table.
- 1.11. **“Error”** means any failure of the Services to operate for the Advertiser in accordance with the Documentation or this Agreement, including, without limitation, problems with integration with the Advertiser System or any such failure or error referred to in the Service Level Table.
- 1.12. **“Emergency Maintenance Period”** is defined in the Service Level Table.
- 1.13. **“First-Line Support”** means the identification, diagnosis, and correction of Errors by the provision of (a) telephone, email, or online chat assistance or (b) Remote Support Services by help desk technicians sufficiently qualified and experienced to identify and Resolve Advertiser’s Support Requests.
- 1.14. **“Internal Response Time”** means, excluding Permitted Downtime, the time recorded from Provider’s receipt of a Support Request to the moment that a Resolution for an Error has been provided by Provider unless such Support Request is sent during non-business hours, in which case the time will be measured starting at 9:00 a.m. on the next Business Day.
- 1.15. **“Maintenance Release”** means any update, upgrade, release, or other adaptation or modification of the Provider Technology, including any updated Documentation, that Provider may provide to Advertiser from time to time during the term and which may contain, among other things, Error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Provider Technology.
- 1.16. **“Permitted Downtime”** is defined in the Service Level Table.
- 1.17. **“Personal Information”** means data that uniquely identifies an individual, or allows an individual’s identity to be reasonably ascertained from such data, including, but not limited to, name, address, health, finances, or email address, as well as any unique identifiers that can recognize, find, detect, or identify an individual person, such as a Social Security or identification number, or transactional records or preferences.

- 1.18. **“Personnel”** means any employee assigned by a Party either to perform Services or assist in the performance of the Services.
- 1.19. **“Provider Data”** means either Provider First-Party Data that is provided or made available to Advertiser in connection with the Services or any Second-or Third-Party Data that Provider receives independently from a third-party source(s) not owned, controlled, or operated by Advertiser and that Provider provides or makes available to Advertiser in connection with the Services, but excludes any Deliverables.
- 1.20. **“Provider Technology”** means any piece of technology (including any proprietary software, hardware, API, algorithm, or method) or equipment used by Provider for the provision of Services.
- 1.21. **“Resolve,”** and similar terms such as **“Resolved,” “Resolving,”** and **“Resolution,”** means that Provider has provided a corresponding Error correction and Advertiser has confirmed such correction, has expressly accepted the correction either orally by its Representative or in writing, and such correction allows for continued use of the Services in all material respects.
- 1.22. **“Second-Line Support”** means the identification, diagnosis, and correction of Errors by the provision of on-site technical support by qualified Provider Personnel (or any of its Permitted Contractors, as applicable) at an Advertiser location designated in writing by Advertiser.
- 1.23. **“Service Level”** means the defined Error severity level and corresponding required service level response(s), response time(s), and Resolution time(s) referred to in the Service Level Table.
- 1.24. **“Service Level Table”** means the list, chart, or table setting forth the levels for performance of the Services as mutually agreed upon by the Parties pursuant to this Agreement, or if no such table has been set forth and agreed upon pursuant to this Agreement as of the Effective Date, then it means the table attached hereto as Exhibit \_\_\_\_.
- 1.25. **“Services”** means the marketing technology products and services (including remotely accessible computing solutions, software-as-a-service offerings, or other services, tools, and applications [used to plan, execute, and measure marketing campaigns, automate (or streamline) marketing processes, collect and analyze data, and engage in audience design, outreach, and targeting]) that Advertiser requests to receive from Provider pursuant to this Agreement in the applicable Service Area (including, if applicable, through an order form[s] or statement[s] of work) and the Support Services.
- 1.26. **“Service Area”** shall mean \_\_\_\_\_
- 1.27. **“Severity Level 1 Error”** has the meaning set forth in the Service Level Table, but if not otherwise provided or set forth in the Service Level Table, a Severity Level 1 Error shall be an Error with a readily available workaround or Resolution that does not materially affect Advertiser’s use of the Services and for which Provider shall acknowledge receipt of as soon as practicable, immediately provide First-Line Support for Resolution within four (4) hours after receipt, and immediately escalate any Severity Level 1 Error not Resolved within twenty-four (24) hours to a Severity Level 2 Error.
- 1.28. **“Severity Level 2 Error”** has the meaning set forth in the Service Level Table, but if not otherwise provided or set forth in the Service Level Table, a Severity Level 2 Error shall be any Error without a readily available workaround or Resolution but which only immaterially impacts any major function or Advertiser’s use and for which Provider shall acknowledge receipt of the associated Support Request as soon as practicable (and no later than two (2) hours), thereafter work continuously to Resolve any Severity Level 2 Error either completely or to re-characterize as a Severity Level 1 Error within forty-eight (48) hours after receipt of the related Support Request, and with the understanding that Provider shall immediately escalate any Severity Level 2 Error not Resolved within forty-eight (48) hours to a Severity Level 3 Error.
- 1.29. **“Severity Level 3 Error”** has the meaning set forth in the Service Level Table, but if not otherwise provided or set forth in the Service Level Table, a Severity Level 3 Error shall be any Error that is a business critical

failure (or that materially affects the operations of Advertiser's business or marketability of its services and/or products), an Error that prevents necessary work from being done, or an Error that disables or materially impairs any major function or Advertiser's general use, and Provider shall acknowledge receipt of the associated Support Request within one (1) hour and shall work continuously to Resolve any Severity Level 3 Error either completely or to re-characterize as a Severity Level 2 Error within twenty-four (24) hours.

- 1.30. **"Support Request"** means any request for Error correction by Advertiser and for which Provider will then initially classify the applicable Error in accordance with the Service Level Table.
  - 1.31. **"Support Services"** means Provider's support and maintenance of the Provider Technology and Services, including First-Line Support and Second-Line Support, during the term.
  - 1.32. **"Third-Party Materials"** means all third-party materials utilized under this Agreement that are not owned by either Party and which may include software, software-as-a-service, online network access, telecommunication service(s), or third-party content or materials.
2. **Services.** Advertiser hereby engages Provider to provide on a non-exclusive basis, and Provider hereby agrees to provide in accordance with the terms and conditions of this Agreement, the Services pursuant to a written order or statement of work attached hereto as a part of Exhibit [redacted] and which shall set forth in more detail the parameters of Advertiser's retention of Provider (the **"Statement of Work"** or **"SOW"**). The Parties shall mutually agree upon and set forth in writing the details for the Services to be provided under each SOW, including the applicable Fees (as such term is later defined), and any specifications or particular requirements for the Deliverables as well as the specific timing for the delivery of the Deliverables and performance of the Services (or any part thereof). Unless otherwise directed by Advertiser, work shall proceed under the terms of a SOW(s) until any new revisions are agreed to in writing by both Parties. Accordingly, the Parties acknowledge that upon mutual agreement, the Advertiser and Provider may execute a new SOW that alters or changes the requirements of any prior SOW(s). The Parties further acknowledge and agree that: (a) each SOW shall be deemed to incorporate the terms and conditions of this Agreement; (b) the terms and conditions of this Agreement shall prevail over any inconsistent terms and conditions set forth in any SOW; and (c) the termination of this Agreement shall terminate all outstanding SOW(s).
  3. **General Service Performance Requirements.** In addition to any requirements for the Services pursuant to this Agreement, Provider shall ensure that the Services are performed in accordance with the following duties and obligations.
    - 3.1. *Contact.* Provider shall provide phone and email contact information for support and maintenance [, including for after-hours and emergency requests,], as well as any specifics for available mobile device, web application, or online portal communication access. In addition to the mechanisms for providing notice specified in this Agreement, the Parties may use email for communications related to a Support Request. Advertiser's email address for notification purposes must be communicated to Provider in writing in accordance with the notice requirements of this Agreement before the Parties can exchange email communication.
    - 3.2. *Representatives.* Each Party shall appoint its respective employee (a **"Representative"**) in writing to serve as such Party's primary point of contact for day-to-day communications, consultation, and decision-making regarding the Services. Each Representative shall be responsible for providing all day-to-day consents and approvals on behalf of such Party under this Agreement. Each Party shall ensure that its Representative has the requisite authority, skill, experience, and other qualifications to perform in such capacity. If either Party's Representative ceases to be employed by such Party or such Party otherwise wishes to replace its Representative, such Party shall promptly name a new Representative by written notice to the other Party.
    - 3.3. *Compliance.* Provider agrees to act and perform at all times in accordance with all applicable laws, rules, and regulations, including those applicable to data collection and storage.
    - 3.4. *Diligence.* Provider agrees to use no less than commercially reasonable efforts in accordance with generally recognized industry practices and standards to perform the Services in a timely and professional manner, and will devote such time, Personnel, and resources as necessary to fulfill any associated duties and

responsibilities in a reasonably efficient and cost-effective manner. Unless otherwise agreed to by the Parties, Provider shall: (i) perform the Services from any facility it owns, controls, or manages so long as it complies with the security and confidentiality obligations herein; (ii) observe the working hours, working rules, and policies of Advertiser if and while working with or within Advertiser's network or system environment or (when mutually agreed) on Advertiser's premises; (iii) furnish all equipment, software, hardware, machinery, tools, and materials used to perform the Services, including, but not limited to, computing capacity, telecommunication needs, personal computing devices, and phones; and (iv) provide the Services in the manner in which Provider deems appropriate to fulfill its obligations herein. Moreover, Provider shall contact Advertiser promptly in writing upon the discovery of any event or problem that might materially delay or negatively affect the cost of the provision of the remaining Services to be performed for Advertiser.

3.5. Timing. The Services shall be performed and delivered by Provider in a timely manner, and specifically with any other implementation, delivery, or access requirements, timelines, deadlines, milestones, or work phases agreed to by the Parties and set forth in the SOW or otherwise attached to this Agreement (the "**Timeline**"). In the event that: (i) a Service or Deliverable is more than thirty (30) days past due as per the schedule of the Timeline; (ii) Provider has failed to correct any Error or deficiency within thirty (30) days after Advertiser's initial notice of such Error or deficiency; or (iii) Provider breaches its obligations with regard to this Agreement; then, unless Provider has an Excusable Delay (as defined below), Advertiser, at its sole option and without prejudice to such other legal rights or remedies it may have hereunder or otherwise, may (a) extend the time for Provider's performance, or (b) treat such failure as a material breach under this Agreement.

3.6. *Excusable Delay*.

(a) *General Allowance*. Provider's nonperformance of its obligations under this Agreement will be excused ("**Excusable Delay**") only to the extent that: (i) such Provider's nonperformance results directly from a Force Majeure Event or Advertiser's failure to perform a necessary, express obligation required of Advertiser herein or by this Agreement; (ii) the Parties observe their respective obligations to send notice(s) as set forth below, as soon as such notice is reasonably practicable; and (iii) Provider uses commercially reasonable efforts to perform in spite of any such Force Majeure Event or Advertiser failure, if practicable.

(b) *Process*.

i. *Delay Notice*. In the event that either Party anticipates that a failure to perform a required obligation may delay the Services or Deliverables for any reason, the Party will use reasonable efforts to promptly notify the other Party in writing, including a description of the causes and the anticipated delay.

ii. *Process*. The Party causing the delay will use no less than commercially reasonable efforts to mitigate the delay, or upon the Parties' mutual agreement, realign the Services with the Timeline in a cost-effective manner and without prejudice to the quality and quantity of the required work, to the extent practicable. If practicable, Provider will make additional Provider Personnel and resources available to mitigate or prevent the anticipated delay, until the delay is resolved or mitigated.

(c) *Modification*. In addition to Provider's obligations above, with respect to an Excusable Delay, the Parties will diligently, and in good faith, agree in writing to a reasonable modification of Provider's obligations that have been affected by such Excusable Delay to provide, as necessary, for an extended period of performance and an adjusted Timeline commensurate to the period of the Excusable Delay.

(d) *Additional Cost*. If Provider is the cause of the Excusable Delay, Provider shall promptly notify Advertiser of any additional reasonable costs incurred by Provider directly resulting from the Excusable Delay, and Provider will use reasonable efforts to mitigate the Excusable Delay (or any related additional

costs) in the most cost-efficient manner. If Advertiser is the cause of the Excusable Delay, Provider shall obtain Advertiser's prior written approval of any additional costs and for any related changes other than as previously agreed upon by the Parties, and such approval shall not be unreasonably withheld.

3.7. *Necessary Approval(s)*. Any approval, consent, or direction (together, "**Approval**") required from a Party pursuant to this Agreement shall be effective and binding upon a Party only if it is in writing, obtained prior to the requesting Party taking any action which requires such Approval, and signed by an authorized Representative of such Party. A Party will not be responsible for any cost reimbursement associated with an action taken without their Approval.

3.8. *Reporting*.

(a) *KPI(s)*. Provider will have primary responsibility for calculating and reporting on certain mutually agreed upon key performance criteria or indicators ("**KPI(s)**") monthly (or by such other schedule as otherwise agreed to by the Parties), in a mutually agreed upon format, so that each Party may effectively monitor how the Services are achieving the Advertiser's objectives.

(b) *Progress Reports*. On a quarterly basis Provider shall report to and provide a written or oral progress report for Advertiser (with the date and format to be mutually agreed upon by the Parties) of the ongoing Services, KPI(s), calculated return on investment for each tool, over- or underutilized portions of the Services, and all tasks completed or milestones achieved as well as any problems encountered relating to performance of the Services. The Parties shall meet either by audio/video telecommunication or in person (as mutually agreed by the Parties) to discuss the report, and Provider shall provide potential solutions to any outstanding issues. These progress reports shall cover any additional criteria set forth in a mutually agreed upon exhibit, order, or statement of work for performance of the Services.

(c) *Availability Reports*. As requested on a monthly basis by Advertiser, Provider shall provide a report describing the Availability of the Services during the prior month. The Availability report shall be in a format as Advertiser may approve in writing (with such approval not to be unreasonably withheld) and shall include, at a minimum (i) the actual Availability of the Services relative to the Availability Requirement and (ii) if Availability has failed in any respect to meet or exceed the Availability Requirement during the applicable reporting period, a description in sufficient detail to inform Advertiser of the cause of such failure and the corrective actions Provider has taken and will take to ensure that the Availability Requirement and any other specifications are fully met going forward.

(d) *Service Records*. Provider shall maintain full and complete records and materials relating to the Services performed and the Fees (defined below) due and owing under this Agreement while the Services are being performed and for a period of at least two (2) years thereafter. In particular, all Services relating to development work for Advertiser shall be fully documented in accordance with applicable professional standards. Advertiser shall have the right, upon reasonable prior written notice and at its cost (in addition to Advertiser's rights with respect to an audit of Provider's accounting records), to inspect or audit the records and related materials of Provider only to the extent pertaining to the calculation of Fees payable by Advertiser or the performance (or provision) of the Services (or any associated information or materials), and its related fulfillment of or compliance with the duties or obligations required by this Agreement. Accordingly, Provider agrees to deliver and provide a copy of such relevant records and materials to Advertiser should Advertiser provide such notice.

3.9. *Personnel*.

(a) *Staffing*. Provider shall assign only trained and experienced Personnel to perform such Services and shall also use commercially reasonable efforts to maintain the continuity of the Provider Personnel during the term. Provider will utilize its Personnel in accordance with all applicable laws, rules, and regulations. Advertiser shall have the right to notify Provider in writing if Advertiser believes that any Provider Personnel are not performing the Services in a reasonably acceptable manner and Provider

will take reasonable corrective action to resolve Advertiser's concerns. If any Provider Personnel are removed, Provider will use commercially reasonable efforts to replace such Personnel as soon as reasonably practicable in accordance with the notice requirements of this Agreement.

- (b) *Key Personnel.* Advertiser may request that certain important or indispensable Provider Personnel be designated as key personnel for the provision of Services ("**Key Personnel**"). Such request will be executed by both Parties and will be made a part of this Agreement. In such instances, Provider shall make such Key Personnel available as a part of its general obligation to provide Services under this Agreement. Advertiser shall have the right to request removal and/or replacement of Key Personnel as detailed above.
- (c) *Responsibility.* In accordance with Provider's obligations under this Agreement, all Provider Personnel shall be subject to the direction, supervision, and control of Provider. Provider agrees to ensure that all Provider Personnel comply with the terms and conditions of this Agreement. Provider is solely responsible and liable for any acts or omissions of Provider Personnel while rendering Services. Provider agrees to ensure that all Provider Personnel shall comply with any security requirements or background checks required by Advertiser.
- (d) *Employee Benefits.* Provider acknowledges that it shall be solely responsible for providing, at its expense and in its name, disability or workers' compensation insurance necessary for conducting the Services. In addition, Provider will be solely responsible for and will file on a timely basis all tax returns and payments required to be filed or made to any federal, state, or local tax authority with respect to Provider's performance of Services and receipt of the Fees under this Agreement.
- (e) *Permitted Contractors.* Provider acknowledges and agrees that it may not engage independent contractors, consultants, or subcontractors ("**Third-Party Subcontractors**") or an Affiliate(s) of Provider to aid Provider in performing the Services without notice to Advertiser (which shall include the Third-Party Subcontractor's name, physical location, and location of where its data is stored) [**and Advertiser's prior written approval**] (such Third-Party Subcontractors and Affiliate(s) of Provider, collectively, "**Permitted Contractors**"). Provider agrees to be solely responsible and liable for the acts of such Permitted Contractors and to provide prior notice when any Permitted Contractor will provide any Services involving any Advertiser Material(s) or Advertiser's Data. Moreover, all such Permitted Contractors shall be treated as Provider's Personnel for the purposes of this Agreement, including, without limitation, with respect to: (a) Provider ensuring that each Permitted Contractor agrees in writing to comply with all of the terms and conditions of this Agreement; (b) Provider agreeing to utilize any and all Permitted Contractors in accordance with all applicable laws, rules, and regulations; and (c) Advertiser having the right during the term to notify Provider in writing if Advertiser reasonably believes that any Permitted Contractor provided by Provider is not performing the Services in a reasonably acceptable manner and request replacement and/or removal as detailed above.

#### 4. Implementation.

- 4.1. *Pilot or Proof-of-Concept Phase.* During the defined initial term of this Agreement, Advertiser has the option, at its sole discretion, to require Provider to develop and implement the Services on a proof-of-concept basis ("**POC**") to allow Advertiser to verify that the Services will be able to achieve certain Advertiser-specified objectives. Performance of the Services during such POC shall extend for no longer than \_\_\_\_\_ (\_\_) months and will be subject to this Agreement and any other terms mutually agreed upon by the Parties. Advertiser shall choose the duration for the POC and the particular Services to be provided for Advertiser, in the exercise of its reasonable judgment, to determine whether or not such Services meet certain mutually agreed upon requirements. The Parties shall document such requirements and add them as an [**exhibit, order, or SOW**] to this Agreement. Failure to meet such mutually agreed upon requirements shall entitle Advertiser to terminate this Agreement immediately upon notice at the conclusion of the POC period.
- 4.2. *Assumptions.* Any assumptions (for example, method of delivery or format of Deliverables) regarding performance of the Services must be mutually agreed upon and set forth in a writing executed by both



Parties. Provider shall inform Advertiser in advance of any requirements for use of the Provider Technology with the Advertiser System. Further, Provider will inform Advertiser if its Services will require the use of any Personal Information and, if necessary, whether data matching can be accomplished without Personal Information. Unless otherwise indicated in a SOW, the Parties acknowledge that the Services will not require or utilize any Personal Information from Advertiser.

- 4.3. *Delivery and Configuration.* Unless otherwise agreed, Provider shall make available the Provider Technology on a turn-key basis pursuant to a mutually agreed upon access or delivery schedule specified in the Timeline or SOW. Provider will provide a written description of the current off-the-shelf capabilities for the Services, with itemized costs for each service or tool, and identify any Maintenance Release, add-ons, or modules requiring an additional fee or expense. In particular, Provider shall inform Advertiser which elements of its Provider Technology must be configured for Advertiser's (or the Advertiser System's) needs. For any such Maintenance Release, add-ons, or modules for the Services to be offered to Advertiser, Provider will make available applicable quotes and estimates in a timely manner for any additional fees or expenses and seek and receive Advertiser's prior approval before requiring payment. The Parties will also agree upon appropriate brand safety parameters and protocols to protect the trademarks, service marks, and related goodwill of Advertiser and its products or services.
- 4.4. *Data.* All Data utilized in connection with this Agreement shall comply with Advertiser's specific (or any other mutually agreed upon) requirements for handling and storing Data as set forth in [REDACTED]. Without limitation of the foregoing, Provider shall provide Advertiser with a dictionary for any necessary terminology for the (applicable) Data and (general) maps so that all (applicable) Data can be appropriately managed in accordance with this Agreement and be readily located, searched, extracted, or exported in connection with the Services and as requested by Advertiser.
- 4.5. *Integration.* Advertiser shall diligently work to implement the Services in compliance with the Timeline in [REDACTED]. Failure to materially conform to the Timeline will be considered a material breach of the Agreement and Advertiser may either (a) terminate the Agreement effective immediately or (b) choose to not pay for the Services (or receive a refund for the portion of time the Services are unavailable) until they are fully implemented. Provider shall review the operations or components of the Advertiser System that are required and necessary for Advertiser to use the Services, and Advertiser shall make available any necessary information to facilitate such review and with such information treated as Confidential Information (as defined below) in accordance with this Agreement. If applicable, Provider will diligently work with and assist any Advertiser contractors, consultants, or engineers for the integration of the Services. Provider shall then indicate to Advertiser how the Provider Technology will integrate or work with the Advertiser System, including, without limitation, the applicable Data and application layers being utilized by Advertiser. This information made available by Provider shall include a reasonably detailed explanation of how Provider-supplied, -processed, or -collected Data will integrate with existing Data collected by the Advertiser System and will detail any data overlaps that may occur. Provider shall also provide Advertiser with information on the technology or media and applicable formats and devices with which the Provider Technology may be utilized by Advertiser, and further whether or not Provider offers omni-channel integration. To the extent requiring additional services (and cost), any recommendations or required details for integration shall be mutually agreed upon and set forth in [REDACTED]. Provider shall cooperatively work with any Personnel utilized by Advertiser to assist with integration of the Provider Technology.
- 4.6. *Third-Party Materials.* Third-Party Materials licensed directly by a third party to Advertiser and which are required to be provided to, accessed by, or used by Provider in connection with providing the Services shall remain at all times the sole property of the applicable third party, and Provider shall comply with Advertiser's agreed upon terms of use governing the Third-Party Materials and instructions provided by the third party (or Advertiser) as applicable to the provision of Services. Advertiser shall provide notice of any applicable terms of use and/or instructions. Provider agrees not to copy or modify (and that its Personnel will not copy or modify) the Third-Party Materials, not to use the Third-Party Materials in any unauthorized manner, and to restrict the access to or use of the Third-Party Materials solely to its authorized Personnel for purposes of this Agreement in furtherance of the performance of the Services for Advertiser.

- 4.7. *Deliverables.* Provider will ensure that its Services and any resultant Deliverables include all required or necessary testing and troubleshooting so that Advertiser may verify that the Services and Deliverables meet any agreed upon specifications pursuant to this Agreement and/or the Documentation made available to Advertiser describing any use or functionality. Advertiser will have thirty (30) days after delivery to evaluate the Services or Deliverables, and if Advertiser determines that the Deliverables do not conform with the applicable requirements or specifications, Advertiser may either (a) request a refund or credit for the Deliverables or Services or (b) request that Provider re-perform the Services or re-create the Deliverables until they are conforming. To the extent that Provider intends to incorporate any Third-Party Materials, such as publicly available or open source software or programming code, into a Deliverable, Provider shall provide to Advertiser in writing all applicable license terms that pertain thereto, provided that Provider shall not use or incorporate in any Deliverable hereunder any open source software or programming code, subject to the license terms, that would require that Advertiser (or an Affiliate of Advertiser) make any Deliverable or any portion of the source code available to third parties or distributable to others.
- 4.8. *Training.* Upon request by Advertiser, Provider shall provide training to employees of Advertiser (designated in writing) on maintaining, using, and/or troubleshooting use of the Services. Such training shall be a comprehensive training of the Services, tailored to how the Services will be used by the Advertiser, that will allow the trained employees to train additional Advertiser employees. To the extent available, Advertiser will have a choice of Provider's available training resources (such as in-person training, videos, or remote training) and shall choose the location for in-person trainings. Parties shall mutually agree upon any additional cost(s) and a date for such training, which shall not occur more than two (2) weeks prior to (final) implementation of the Services.
5. **Required Service Duties.** In addition to any requirements for the Services set forth in a SOW, Provider shall ensure that such Services are performed in accordance with the following duties and obligations.
- 5.1. *Data Cleansing.* Provider will ensure that its Services include, as applicable, all necessary cleansing of the Data to delete duplicate entries, correct (known) misspellings and other errors, add missing data, and provide consistent data results.
- 5.2. *Hosting.* For any remotely accessible or cloud tool(s), application(s), or solution(s), Provider will ensure that its Services are provided in accordance with a policy approach that incorporates all of the following commitments in accordance with generally recognized industry standards and practices. The facility(ies) from which such Services are hosted and provided shall be equipped with access security, climate control, fire suppression, managed power supply, and back-up capabilities and resources for the foregoing. Online Service access shall be load-balanced to distribute load, usage, and redundancy (across associated servers). The computing, operating, and networking infrastructure of and for the Services is and will be monitored 24/7/365 to detect abnormalities, including environmental monitoring, network monitoring, load-balancing monitoring, web server and database monitoring, firewall services, and intrusion detection. Provider shall make a current copy of its policy (or the current policy of its subcontractor) available to Advertiser for review upon Advertiser's request. Failure to provide the Services in accordance with such policy approach shall constitute a material breach of this Agreement.
- 5.3. *Service Availability.*
- (a) *General Requirement.* In addition to any other covenant, representation, or warranty made by Provider under this Agreement, an Availability Requirement (defined below) and the related procedures of this Agreement shall apply to Provider's provision of or access to any remotely accessible tool(s), application(s), or solution(s) as a part of the Services. Provider shall make such Services Available for 99.99% of each month during the term without interruption, excluding Permitted Downtime (the "**Availability Requirement**"). The Services are not considered Available in the event of any Error, performance degradation, or inoperability of the Services, in whole or in part, except as a result of Permitted Downtime.
- (b) *Service Credits.* If the actual Availability of the Services is less than the Availability Requirement during any one (1) month of the term (such difference between the Availability Requirement and the

actual period of Availability, the “**Availability Deficit**”), Provider shall provide to Advertiser a service credit equal to the portion of any Fees applicable to the hours of the month in which said Availability Deficit occurred (“**Service Credit**”) as further outlined in the Service Level Table. Such Service Credit shall be assessed against the total Fees applied to Advertiser’s access to the Services for the following invoice period and reflected as a discount on the applicable invoice therefore; or, if there is no subsequent invoice period, Provider shall promptly refund to Advertiser all Fees represented by such Service Credit.

- (c) *Breach and Refund.* If the Services are subject to an Availability Deficit which: (i) is the result of the Services being Available for less than 95% of any given month of the term; (ii) continues for any two (2) consecutive months during the term; or (iii) continues for any three (3) months in a consecutive six-(6-) month period, such Availability Deficit shall constitute a material breach of this Agreement by Provider. In the event of such material breach, Advertiser may terminate this Agreement immediately upon written notice to Provider, notwithstanding the termination for cause provisions set forth in this Agreement. Upon receipt of said notice, Provider shall promptly provide a refund to Advertiser of any Fees applicable to the hour(s)/day(s) of the term in which the Availability Deficit occurred and for any period of time after the effective date of termination. Advertiser’s remedies for Provider’s material breach of the Availability Requirement hereunder shall be in addition to and without prejudice to any other remedies available under this Agreement.
- 5.4. *Data Backup.* To the extent Provider stores any Advertiser Material(s) or Advertiser Data, Provider will regularly back up such materials or Data and provide for routine or emergency recovery of any Advertiser Material(s) or Advertiser Data from the associated archives. The backup schedule will include at least weekly full backups and daily incremental backups. Upon written request from Advertiser, Provider shall provide Advertiser with summary information of its plans for backup, storage, and recovery and shall make relevant Personnel reasonably available for discussion with Advertiser.
- 5.5. *Disaster Recovery.* With respect to the Services [**the failure or interruption of which would, in Advertiser’s reasonable opinion, cause significant problems to Advertiser’s business operations**], Provider shall maintain or contract for a commercially reasonable disaster recovery plan (“**Disaster Recovery Plan**”) either for a Provider-owned or Provider-operated system, network, infrastructure, or facilities or Provider-retained or Provider-contracted third-party facility, system, network, or infrastructure designated for storage of any Advertiser Material(s) or Advertiser Data. Unless otherwise expressly agreed by Advertiser, Provider shall be responsible for providing or procuring all personnel, equipment, and software required to implement, provide, and abide by such Disaster Recovery Plan. At a minimum, the Disaster Recovery Plan shall describe the physical, electronic, and personnel procedures to be followed with respect to the continued provision of the Services in the event that all or any portion of the Services are unavailable for use by Advertiser because they have been destroyed, damaged, or are otherwise not available for use for any reason. The Disaster Recovery Plan shall describe the criteria and procedures for declaring a disaster, including notification to appropriate stakeholders. Provider shall regularly test such Disaster Recovery Plan no less frequently than annually and promptly correct any deficiencies discovered in such testing. Provider shall have the continuing responsibility of developing, implementing, and maintaining the Disaster Recovery Plan and shall update the Disaster Recovery Plan promptly to reflect the results of the testing described in the foregoing sentence, as well as changing technology. Upon written request from Advertiser, Provider shall provide Advertiser with summary information of the Disaster Recovery Plan for its review and Provider shall make Personnel available for discussion if requested by Advertiser in writing. Additionally, if and as requested by Advertiser and at Advertiser’s expense, Provider shall provide reasonable advice to Advertiser from time to time with regard to Advertiser’s disaster recovery and business continuity plans as they relate to the Services and the Advertiser Material(s) or Advertiser Data stored thereby. If a catastrophic loss or calamity is suffered that results in the loss, destruction, or non-Availability of the Services, the Advertiser Material(s), or Advertiser Data in control or possession of Provider, Provider shall reasonably cooperate with and assist Advertiser in promptly taking appropriate measures to facilitate recovery and replacement of such items. Recommendations of new technology to protect against loss by Provider’s communications, equipment and vendors shall also be reviewed on a regular basis and be included in Provider’s planning process as appropriate.

## 5.6. *Support and Maintenance.*

- (a) *Maintenance Releases.* Provider will explore opportunities on an ongoing basis to reduce Advertiser's total cost of receiving the Services and to improve Provider's performance of the Services, which may include economies of scale and greater efficiencies through improved technology or other developments. Provider shall make available for review by Advertiser a document presenting its continuous improvement program (or roadmap) for the Services and will include both short-term initiatives during the then-current calendar year as well as longer-term initiatives beyond the then-current calendar year. Further, and during the term, Provider shall promptly provide Advertiser with all Maintenance Releases as soon as they become available to ensure access and functionality in compliance with the specifications set forth in the Documentation.
- (b) *Maintenance Scheduling.*
- i. *Regular Maintenance Scheduling.* Provider will use commercially reasonable efforts to schedule non-emergency Permitted Downtime during hours other than during regular business hours (**[enter applicable time zone]**). Provider will provide Advertiser with at least **[one (1) day]** advance notice for standard maintenance. Permitted Downtime notifications will be sent to Advertiser at its designated email address for notice. All such non-emergency Permitted Downtime shall (a) last no longer than one (1) hour (unless occurring overnight, in which case Permitted Downtime may last up to four (4) hours), and (b) occur no more frequently than once per week; provided that Provider may request Advertiser's approval for extensions of scheduled Downtime beyond such permitted periods, such approval not to be unreasonably withheld or delayed.
  - ii. *Emergency Maintenance Scheduling.* Emergency maintenance may occur at any time, as Provider deems necessary. Provider will provide Advertiser with at least **[thirty (30) minutes]** advance notice for emergency maintenance, if possible, and will use diligent efforts to complete such emergency maintenance as quickly as possible. Emergency maintenance notifications will be sent to Advertiser at its designated email address.
- (c) *Advertiser Support Responsibilities.* Advertiser may request Support Services by way of a Support Request. Advertiser, either through a duly appointed Representative or through such other mutually agreed upon communication channels (e.g., phone, email, or web/mobile application [or portal]), shall notify Provider of each Support Request. **[Advertiser shall include in each Support Request a reasonable description of the reported Error and the time Advertiser first observed the Error.]** Moreover, Advertiser shall provide each of the following to the extent reasonably necessary to assist Provider to reproduce the operating conditions similar to those present when Advertiser detected the relevant Error and to respond to and Resolve the applicable Support Request: (i) output and other data, documents, and information, all of which shall be deemed Confidential Information as defined under this Agreement; (ii) remote access to the Advertiser System (as necessary to evaluate or Resolve the Error); and (iii) such other reasonable cooperation and assistance as Provider may reasonably request.
- (d) *Provider Responsibilities for Support Requests.* Provider shall: (i) respond to and Resolve all Support Requests **[in accordance with the Service Level Table]**; (ii) provide First-Line Support during regularly scheduled business hours (**[9:00 a.m. to \_\_\_ p.m.] [insert time zone]** from Monday through Friday, excluding public holidays (unless otherwise specified by Provider), by means of email, telephone, or online chat assistance as the Parties otherwise agreed **[pursuant to this Agreement]**; (iii) provide Second-Line Support **[pursuant to the Service Level Table]**; and (iv) provide all such other services as may be necessary or useful to correct an Error **[or otherwise fulfill the Service Level Table requirements]**, including, without limitation, defect repairs, programming corrections, and remedial programming. For each Support Request, Provider shall inform Advertiser of the [priority/severity level] assigned to the Support Request **[in accordance with the Service Level Table]**. Provider may not reassign a problem with a lower priority assessment without notice to Advertiser.
- (e) *Support Request Response Service Levels.* Internal Response Times shall comply with the timeframes set forth in the [Service Level Table] based on Provider's good faith designation of the severity of the

associated Error, subject to the Parties' written agreement to revise such designation after Provider's investigation of the reported Error and consultation with Advertiser. First-Line Support shall be provided for all Support Requests. Second-Line Support shall be provided in accordance with the Service Level Table or upon Advertiser's request. However, the severity of any Error shall be automatically escalated to the next support level for response and resolution in the event the time for Resolution of the current severity level expires or elapses. Specifically, Provider shall immediately provide First-Line Support and then escalate any Severity Level 1 Error to provide Severity Level 2 Error support if Provider has not Resolved such Support Request in accordance with the time requirements herein, and such Severity Level 2 Error Support Request shall be escalated to Severity Level 3 Error if Provider has not Resolved such Support Request within the allotted time requirements. Advertiser may in its sole discretion grant a reasonable extension of the Service Level response or Resolution times in writing signed by Advertiser.

- (f) *Service Credit(s) for Failure to Respond to Support Request(s)*. If Provider fails to meet an Internal Response Time for the applicable Service Level Error, Advertiser will be entitled to a service credit or refund equal to the percentage of the then-current support fee for each hour by which Provider's response exceeds the Internal Response Time ("**Support Credit**"). Such Support Credit shall be assessed against the applicable Service Fees for the following invoice period and reflected as a discount on the applicable invoice therefore; or, if there is no subsequent invoice period, Provider shall promptly refund to Advertiser the Fees represented by such Support Credit. Provider's failure to meet the Internal Response Time for any Severity Level 3 Error shall also constitute a material breach of this Agreement.

5.7. *Remote Support Services*. Provider may provide support remotely, including by means of telephone or internet telephony, or over the internet through the use of remote access software that Provider installs on the Advertiser System or otherwise makes available to Advertiser (collectively, the "**Remote Support Services**"), to assist in analyzing and Resolving any Error reported by a Support Request during the term. Advertiser shall give Provider reasonable access to the Advertiser System to help facilitate the installation and use of the remote access software necessary for Provider to provide the Remote Support Services to Advertiser ("**Remote Access Software**"). Such Remote Access Software may only contain technological measures designed to collect and transmit to Provider necessary diagnostic, technical, and usage information in furtherance of the performance of the Services for Advertiser. Provider shall at all times treat any information it collects, maintains, processes, or uses under this Section as Advertiser's Confidential Information. In addition, the Parties acknowledge and agree that Provider may collect, maintain, process, and use only such information as is necessary to assist in analyzing and Resolving a Support Request and use such information solely to provide the Services in accordance with the terms and conditions of this Agreement. Further, all or portions of the Remote Access Software may remain on the Advertiser System after a Support Request is Resolved solely for the purposes set forth in this Section. Nothing in this Section shall derogate from, limit, or excuse in any way Provider's obligation to provide any other Support Services in accordance with the terms and conditions of this Agreement.

## 6. Compensation.

6.1. *Fees*. As full and complete consideration of Provider's performance of the Services and development and delivery of the Deliverables, Advertiser shall pay to Provider the specified amounts and fees set forth in the applicable SOW (the "**Fees**"). For Fees on a flat-fee basis, Provider shall not exceed any budget or project amount set forth in the applicable SOW without Advertiser's prior written consent and a good-faith justification for any increase. Advertiser shall be permitted to withhold Fees in the event that Provider fails to meet any agreed upon deadlines, perform Services, or produce Deliverables in accordance with any mutually agreed upon requirements or specifications. For Fees at an hourly rate, billable hours will only include time directly attributable to the Services provided to Advertiser.

- (a) *Flat-Fee Basis*. For Fees based on a flat-fee basis, Provider shall not exceed any budget or project amount without Advertiser's prior written consent and a good-faith justification for any increase. All such Fees shall be itemized and articulate the Fee associated with Service(s) requested and purchased by Advertiser. Permitted Contractor fees and expenses shall be included in any fixed Fee payable pursuant to this Agreement, unless the Parties otherwise agree in writing.

- (b) *Hourly Rate Basis.* For Fees at an hourly rate, Provider will not exceed or charge at rates different than as mutually agreed upon, and billable hours will only include time directly attributable to the Services, with hourly Fees not including any reimbursements for Provider's or its Personnel's administrative, travel, vacation, or other similar time not expressly devoted to the performance of the Services.
  - (c) *Add-Ons.* Advertiser will not pay any fees to Provider other than the Fees agreed upon by the Parties. Any additional fees for add-ons or upgrades will be negotiated and accepted by the Parties on a mutually agreed upon basis.
- 6.2. *Expenses.* Except as otherwise agreed to by the Parties in a SOW attached to this Agreement, each Party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution, and performance of this Agreement and any ancillary negotiations or discussions to be had by the Parties in connection with this Agreement. Advertiser shall have the final authority to approve all third-party costs payable to, or to be incurred by, Provider on behalf of Advertiser in connection with the Services. For costs or expenses that Advertiser has agreed to reimburse or pay to Provider, Provider shall furnish supporting reasonable documentation sufficient to confirm the applicable cost or expense to be entitled to any such reimbursement or payment.
- 6.3. *Payments.* Payments for any amounts and Fees owed shall be made pursuant to the schedule for payment identified in the applicable SOW. But, if no schedule is identified in the applicable SOW, then Provider shall be paid on a monthly basis for the Services rendered in the prior month upon Advertiser's receipt of an invoice specifying the Services performed, any specific Fees applicable to such Services, the hours expended, and the (allowable) reimbursable expenses incurred. Payments will be made in U.S. Dollars, and unless otherwise indicated in a SOW, paid within thirty (30) days of receipt of each invoice by Advertiser so long as Provider has performed the Services in accordance with this Agreement and any SOW.
- 6.4. *Payment Disputes.* Advertiser shall pay all undisputed amounts in accordance with this Agreement. With respect to any disputed invoice or disputed portion of an invoice, Advertiser shall provide written notice thereof to Provider within thirty (30) days of Advertiser's receipt of such invoice. The Parties shall immediately escalate such dispute and seek to mediate and resolve the same. If the Parties fail to resolve such dispute within sixty (60) days of Advertiser's receipt of the invoice subject to such dispute, then (i) the Parties may agree to continue to work to resolve the dispute in good faith and in a timely manner, or (ii) either Party may terminate this Agreement for breach in accordance with this Agreement.

## 7. Proprietary Rights.

### 7.1. Advertiser Grants.

- (a) *Advertiser Materials.* Advertiser hereby grants to Provider a limited, revocable, non-exclusive, non-transferable, royalty-free right and license (only during the term of this Agreement) to use specified Advertiser Materials in furtherance of the performance of the Services for the benefit of Advertiser.
- (b) *Advertiser Data.* Advertiser hereby grants to Provider a limited, revocable, non-exclusive, non-transferable, royalty-free right and license to use specified Advertiser Data in furtherance of the performance of the Services for the benefit of Advertiser. In connection with the foregoing grant, Provider may use Advertiser's Data so long as Provider: (i) complies with Advertiser's privacy policy; (ii) does not irretrievably commingle such Advertiser Data with any Provider Data or third-party data; and (iii) does not disclose any Advertiser Data that describes or reflects the performance of the Services or any Personal Information to any third party. Notwithstanding the foregoing, Advertiser acknowledges and agrees that Provider may also use and retain Advertiser First-Party Data (created as a Deliverable or provided by Advertiser as Advertiser Data in connection with the performance of the Services during the term of this Agreement) as a part of Provider's predictive modeling database or for internal data modeling and analysis, so long as all use remains lawful and strictly limited to: (aa) internal purposes only designed to build and improve the Services in a manner consistent with applicable law; (bb) usage only as part of an aggregated database with other data on a deidentified basis; and (cc)

usage that does not identify Advertiser or any individual person. Moreover, Provider assumes all risk associated with such use or retention of any Advertiser First-Party Data after expiration or termination of this Agreement and will be responsible for any liability, loss, or damage caused by or resulting from Provider's use, retention, or storage of such Advertiser First-Party Data.

7.2. *Provider Grant(s).* Provider hereby grants to Advertiser a worldwide, non-exclusive, non-transferable, royalty-free right and license (only during the term of this Agreement) to access, install, use, test, and reproduce the Provider Documentation, Provider Data, and Provider Technology **[for internal purposes only]** and in compliance with applicable law or regulation. Advertiser receives no other rights to the Provider Documentation, Provider Data, and Provider Technology. When specified in a SOW or as otherwise permitted by Provider, Advertiser may allow its Affiliates to access, install, use, test, and reproduce the Provider Documentation, Provider Data, and Provider Technology in accordance with and pursuant to any grant(s) to Advertiser under this Agreement.

7.3. *Ownership.*

(a) *Data.*

- i. *First-Party Data.* All Advertiser First-Party Data shall be, as between the Parties, the property of Advertiser. All Provider First-Party Data shall be, as between the Parties, the property of Provider.
- ii. *Second-Party Data and Third-Party Data.* All Second-Party Data or Third-Party Data shall remain the property of the respective provider, licensor, or supplier of such Second-Party Data or Third-Party Data.

(b) *New Data.*

- i. *Advertiser.* Advertiser shall own new Data that is a Deliverable(s).
- ii. *Provider.* All Data generated anew by Provider in performance of the Services, which does not include any Advertiser Data or Advertiser Material(s) and which is not a Deliverable(s) under this Agreement, shall be the property of Provider.

(c) *Advertiser Materials.* All Advertiser Materials provided or made available by Advertiser shall be, as between Advertiser and Provider, the property of Advertiser (or its licensor[s] or supplier[s]). Nothing in this Agreement shall constitute or be construed as any sale, assignment, or other transfer of any proprietary interest in or to such Advertiser Materials.

(d) *Provider Technology.* All Provider Technology that is provided or made available by Provider to Advertiser shall be, as between Advertiser and Provider, the property of Provider (or its licensor[s] or supplier[s]). Nothing in this Agreement shall constitute or be construed as any sale, assignment, or other transfer of any proprietary interest in or to such Provider Technology.

(e) *Advertiser System.* As between Advertiser and Provider, the Advertiser System shall be the property of Advertiser (or its licensor[s] or supplier[s]). Nothing in this Agreement shall constitute or be construed as any sale, assignment, or other transfer of any proprietary interest in or to such Advertiser System.

(f) *Deliverables.* Provider agrees that all Services performed, and all Deliverables provided under this Agreement, will either be original to Provider or provided by Provider in a manner that ensures that Advertiser may utilize the full benefit of such Deliverables without infringing, violating, or misappropriating the intellectual property, proprietary, or privacy rights of any third party or person. All Deliverables shall meet the requirements of this Agreement and any applicable order or SOW. Provider shall deliver any Deliverables without any locks or other disabling devices not approved in

advance in writing by Advertiser and, when delivered, such Deliverables shall not contain any viruses or other harmful code. All Deliverables shall be the property of Advertiser and will be considered “work-made-for-hire” under United States law. Accordingly, Advertiser will acquire (to the maximum extent permitted by law) all rights, title, and interest in and to such Deliverables as if Advertiser were the author, creator, or provider of such Deliverables, and Advertiser shall have the exclusive right to use, market, sell, modify, promote, display, distribute, and otherwise exploit the Deliverables in its sole discretion for any purpose (including by adapting to new media, applications, and formats) to the maximum extent permitted by law. To the extent such Deliverables are not considered a work-made-for-hire, Provider hereby grants, conveys, transfers, and assigns to Advertiser all of Provider’s rights, title, and interest in and to such Deliverables, including, without limitation, all intellectual property and proprietary rights. Any assignment of copyright hereunder includes all rights of paternity, integrity, disclosure, and withdrawal, and other rights that may be known as or referred to as “moral rights” (collectively, “**Moral Rights**”). To the extent such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, Provider hereby waives such Moral Rights. Provider agrees to perform such acts and execute such documents and instruments as Advertiser may now or hereafter deem reasonably necessary or desirable to confirm waivers and consents, evidence the ownership or transfer of absolute ownership of all Deliverables to Advertiser, and otherwise perfect Advertiser’s rights, title, and interest in and to the Deliverables; provided, however, if following seven (7) days’ written notice from Advertiser, Provider refuses, or is unable due to disability, incapacity, or death, to execute such documents relating to Deliverables, Provider hereby appoints any of Advertiser’s officers or attorneys as Provider’s attorney-in-fact to execute such documents on Provider’s behalf. This agency is coupled with an interest and is irrevocable without Advertiser’s prior written consent.

(g) *Pre-Existing Materials.* Notwithstanding the foregoing, Advertiser acknowledges that as part of the Services, Provider may incorporate or integrate certain of its Provider Data or Provider Technology into a Deliverable(s) in a manner that is either necessary for Advertiser to utilize the Deliverable(s) or required for Advertiser to derive the full benefit of the Deliverable(s) (“**Pre-Existing Materials**”). In such instances, Provider grants an irrevocable, perpetual, non-exclusive, royalty-free, fully paid-up license to Advertiser to use, copy, distribute, reproduce, modify, and display Pre-Existing Materials solely as incorporated into the Deliverable and solely as required for Advertiser to receive and exercise the rights and benefits associated with its full ownership thereof. Nothing in this Agreement shall constitute or be construed as any right or license for Advertiser to use Pre-Existing Materials in any format or for any purpose separate from its incorporation and integration into the Deliverable.

7.4. *Trademarks and Property.* Any use by Provider of Advertiser’s content, campaign strategies, channel properties or any trademarks, trade names, service marks, domain names, or logos shall only be with Advertiser’s prior written permission and only be in accordance with Advertiser’s then-current trademark or property usage practices and any quality control measures, which Advertiser may communicate to Provider from time to time. The use of Advertiser’s trademarks or service marks by Provider and all goodwill attendant thereto shall inure exclusively to the benefit of Advertiser.

7.5. *Residuals.* Each Party will be permitted to use and retain the “**Residuals**” (meaning any information in non-tangible form [i.e., ideas and techniques] that are not written or in other documentary form [such as a tape document, or digital content] which may be retained by a person as a result of his/her review of the information or as a result of possessing or making references to tangible records containing such information) obtained or learned in connection with this Agreement; *provided, however,* that each Party maintains the confidentiality of the other Party’s Confidential Information as required by this Agreement and does not otherwise copy or re-use any works of authorship of the other Party (protectable under U.S. Copyright law), including any Deliverable.

7.6. *Reservation of Rights.* Each Party reserves all rights not expressly granted herein including, without limitation, each Party’s respective algorithms, modeling, scoring, or analysis. Unless otherwise agreed expressly in mutually executed writing, nothing herein shall be construed as granting any exclusive rights or limiting in any manner any business rights or activities.



## 8. Confidentiality.

8.1. *Scope.* “**Confidential Information**” of a Party shall mean any non-public or confidential information or data (in or on any media now known or hereinafter developed) disclosed before or after the Effective Date by such Party or on such Party’s behalf (each a “**Disclosing Party**”) either directly or indirectly to the other Party (each a “**Receiving Party**”) (or the Receiving Party’s respective employees) relating in any way to the Disclosing Party’s products, processes, apparatus, operating procedures, programs, plans, finances, costs, operations, or customers that is either labeled or identified as “Confidential” or “Proprietary” or is reasonably understood to be the confidential or proprietary information of the Disclosing Party. Without limitation of the foregoing, the Confidential Information shall be expressly understood to mean and include the terms and conditions of this Agreement, each Party’s claimed inventions and patent applications, and any user credential(s) or password(s) required for access to and use of the Provider Technology. Notwithstanding the foregoing, Confidential Information shall not include information which the Receiving Party can prove: (a) was or became a part of the public domain through no fault of the Receiving Party; (b) was received from a third party in good faith where said party is not obligated to the Disclosing Party to keep said information confidential; (c) was in the other’s possession, as evidenced by written or other tangible evidence, prior to receipt from the Receiving Party; or (d) was disclosed in response to a requirement under law.

8.2. *Confidentiality Obligation.* The Receiving Party will maintain any and all Confidential Information in strict confidence using no less than reasonable effort and in a manner consistent with the approach employed by the Receiving Party for its own confidential information of a similar nature to prevent such Confidential Information from being disclosed or made available to any unauthorized person or entity. In addition, any right to use Confidential Information shall be limited strictly to that which is necessary to perform such Party’s responsibilities under this Agreement and solely to the employees of the Receiving Party who have a need to review the Confidential Information in connection with the Services.

9. **Information Security.** In the event the Parties have not agreed to a stand-alone data processing addendum or terms and conditions specific to the handling of Personal Information, the following clauses of this Agreement shall apply to performance of the Services under this Agreement.

9.1. *Protection of Personal Information.* Notwithstanding any definition or treatment of Confidential Information under this Agreement, additional handling and security obligations (set forth below) shall apply to any Data meeting the definition of Personal Information that is received from or provided by Advertiser and/or generated by Provider in connection with performing the Services.

9.2. *Attribution.* Provider will inform Advertiser whether and the general manner by which it is utilizing cookies in connection with performance of the Services for Advertiser.

9.3. *Additional Safeguarding Requirements.* Notwithstanding any confidentiality obligations under this Agreement, all Personal Information in the possession or control of Provider must be subject to appropriate technical, physical, and organizational security measures in compliance with applicable laws and regulations and in accordance with no less than industry standards regarding the use, handling, security, storage, and disclosure (as permitted by Advertiser) of sensitive or confidential data, and must be segregated and not commingled with other third-party data unless otherwise agreed by the Parties. Provider shall ensure that only authorized Personnel of Provider, who have a need to know or access Personal Information in furtherance of Provider’s performance obligations under this Agreement, have access to the systems and networks that contain or provide access to the Personal Information and that no one removes any Personal Information from the system or facility where it is stored without appropriate written authorization from Advertiser in accordance with the terms of this Agreement. In addition, Provider shall transmit and store Personal Information only in an encrypted manner, process any Personal Information of Advertiser only in accordance with Advertiser’s reasonable written instructions, and use Personal Information only to the extent necessary to carry out the purposes of this Agreement and provide the Services. Without Advertiser’s prior approval, Personal Information may not be stored, maintained, transferred, or transmitted by Provider to a contractor, a data center, or in any manner whatsoever outside of the United States. Advertiser reserves the right to require that Personal Information or Confidential Information of Advertiser be stored in a more secure Provider device, server, or environment and to undertake any communications regarding the transmission

of Personal Information or Advertiser's Confidential Information with Advertiser in an encrypted manner. Advertiser may impose further requirements or restrictions on the collection, handling, or use of the Personal Information in light of legal or regulatory developments concerning privacy, security, or consumer-related issues. Provider shall have no right to use any Personal Information for any reason not expressly permitted by Advertiser in writing and shall immediately return to Advertiser any such information in its possession or control upon the earlier of the request by Advertiser or termination or expiration of this Agreement.

- 9.4. *Processing & Transfer.* As mutually agreed upon by the Parties, all processing or transferring of Data utilized in connection with this Agreement shall also comply with Advertiser's specific or any other mutually agreed upon transfer or processing requirements as set forth in [REDACTED].
- 9.5. *Privacy Policy.* Advertiser will post a privacy policy for its data collection and use practices relevant to the Advertiser Materials that complies with applicable law and regulation. Provider agrees that it will provide the Services and handle all Personal Information at all times in accordance with Advertiser's privacy policy (posted online at [REDACTED]), which may be amended from time to time in Advertiser's sole discretion; provided Provider will only be required to comply with amended versions of the Advertiser privacy policy that are made available or provided to Provider. Provider will also maintain a legally compliant privacy policy on its website or other digital properties that is accessible to the public and Advertiser that explains its data use practices.
- 9.6. *Risk Assessments.* Annually upon written request by Advertiser and within five (5) Business Days of such request, Provider shall provide Advertiser with a copy of Provider's current, SSAE 16, SOC 2 Type II report or a similar security or risk report ("**Assessment Report(s)**"). In the event that Advertiser has any questions regarding such reports, Provider shall make appropriate Personnel reasonably available to discuss the contents thereof. In the event any Assessment Report(s) reveals or indicates that the security of Provider's systems suffers from a material deficiency or vulnerability, Provider shall promptly address and remedy such finding in the appropriate manner. In the event Advertiser does not agree with how Provider has responded to such material deficiency or vulnerability as set forth in such writing, Advertiser shall have the right to terminate this Agreement without penalty upon written notice to Provider with no early termination or other liability to Advertiser.
- 9.7. *Virus.* Provider shall use no less than commercially reasonable efforts to prevent the use of any hidden files; automatically replicating, transmitting, or activating computer program; virus (or other harmful or malicious computer program); or any equipment-limiting, software-limiting or Services-limiting function (including, but not limited to, any key, node lock, time-out or similar function); whether implemented by electronic or other means (collectively, "**Illicit Code**"). Provider shall not invoke or cause to be invoked any Illicit Code at any time, including upon expiration or termination of this Agreement for any reason, without Advertiser's prior written consent. If Provider discovers that Illicit Code has been introduced into software residing on the Provider Technology or Advertiser's network, software hosted or supported by Provider, or any Deliverable, Provider shall, at no additional charge: (a) immediately undertake to remove such Illicit Code and correct, repair, or replace any Deliverable containing such Illicit Code; (b) promptly notify Advertiser in writing of the introduction; and (c) use no less than commercially reasonable efforts to correct and repair any damage to Advertiser's Data or software caused by such Illicit Code and otherwise assist Advertiser in mitigating such damage and restoring any affected Services, Deliverable, or Advertiser's network, software, or equipment.
- 9.8. *Data Subject Requests.* Advertiser shall notify Provider promptly after receipt if Advertiser receives a request from an individual for access to, or rectification or erasure of, Personal Information that Provider controls, processes, or possesses, or if it receives an objection or "opt-out of sale" request from an individual to the processing or sale (as such term is defined by the California Consumer Privacy Act of 2018) of Personal Information that Provider controls, processes, or possesses. In the event Advertiser or Provider receives such a request or objection, Provider shall promptly (and no later than five (5) Business Days after receipt of the request from the individual or Advertiser, as applicable): (a) erase the Personal Information; (b) prevent the Personal Information from being disclosed to third parties; (c) provide Advertiser with such information as Advertiser may reasonably require to allow Advertiser to respond to any such request or objection; and (d) provide commercially reasonable assistance in relation to any such request or objection, including obtaining proper identification and verification from the individual. Provider shall not

disclose the individual's Personal Information or otherwise respond directly to the individual without the prior consent of Advertiser, except as otherwise required by law. Provider shall be responsible for all costs incurred in connection with the foregoing as well as any inability of Provider to produce or remove such Personal Information.

- 9.9. *Data Incident.* Provider agrees to immediately (no later than forty-eight (48) hours of Provider first becoming aware) notify Advertiser of any reasonably suspected or actual loss of the Data (including Personal Information) or breach or compromise of its security which has resulted or may result in the loss or unauthorized access, disclosure, use, or acquisition of any Data (including hard copy records) or otherwise presents a potential threat to any Advertiser networks or systems (all collectively, a "**Data Incident**"). While the initial phone notice may be in summary form, a comprehensive written notice should be given within forty-eight (48) hours after the initial notice to Advertiser. The notice shall summarize in reasonable detail the nature and scope of the Data Incident (including each Data element type that relates to an individual, if any) and the corrective action already taken or to be taken by Provider. The notice shall be supplemented in a timely fashion to the level of detail reasonably requested by Advertiser, inclusive of information from relevant forensic reports. Provider shall promptly take all necessary and advisable corrective actions and shall cooperate fully with Advertiser in all reasonable efforts to investigate the Data Incident, mitigate the adverse effects, and prevent its recurrence. Such cooperation will include responding to Advertiser's inquiries about the Data Incident in a timely fashion. In the event of a Data Incident, Advertiser shall designate a point of contact for Provider. Provider acknowledges that it is responsible for the confidentiality and security of any Data in its possession, custody, or control. The Parties will collaborate on whether any communication is required to be given to any person as a result of a Data Incident, and if so, the content of that communication. Advertiser will be responsible for designating a signatory to any such communication. To the extent a Data Incident is caused by Provider, Provider will also bear all costs of any such communication. If Advertiser reasonably determines that the Data Incident is likely to have substantial adverse impact on Advertiser's relationship with its customers or clients or otherwise substantially harm its reputation, Advertiser may, in addition to any other rights or remedies available, suspend the Services or terminate this Agreement for convenience.

## 10. Representations and Warranties.

- 10.1. *Limited Warranty.* Without limitation of any other Service(s) responsibilities hereunder, Provider warrants that its Services will conform substantially with the Documentation and otherwise operate Error-free during the initial **[thirty-(30-) day]** period after initial installation or access by Advertiser. In the event of any Error occurring during the initial **[thirty-(30-) day]** period after installation or access by Advertiser, Advertiser may make a Support Request and be entitled to a Support Credit (as set forth above) in addition to any other rights or remedies available to Advertiser pursuant to this Agreement.
- 10.2. *Provider General Warranties.* Provider represents that: (a) it and its Personnel have the qualifications and ability to perform the Services in accordance with the terms and conditions of this Agreement, any SOW, and any other agreements entered into by the Parties; (b) it has the right to enter into and fully perform this Agreement and its obligations hereunder and that it has not made and/or will not make any contractual or other commitments which would conflict with the performance of Provider's obligations hereunder or the full enjoyment by Advertiser of the rights herein granted; (c) all Services performed and all Deliverables provided (including any Third-Party Materials) will be either original to Provider or used and made available for use in a manner that does not infringe, violate, or misappropriate the proprietary rights of any third party; and (d) any Data provided was lawfully obtained, with appropriate rights clearance.
- 10.3. *Advertiser General Warranties.* Advertiser represents and warrants that it has the right to enter into and fully perform this Agreement and that it has not made, nor will it make, any contractual or other commitments which would conflict with the performance of its obligations hereunder.

## 11. Indemnification.

- 11.1. *Provider Responsibility.* Provider will at all times indemnify and hold harmless Advertiser, its successors, licensees, and assigns from and against any and all damages, liabilities, judgments, costs, and expenses,

including legal fees, arising out of any claims asserted by a third party arising from or relating to (a) the use of any material furnished, developed, licensed, or created by Provider hereunder, namely, the Deliverables, including that such Deliverables infringes, violates, or misappropriates the intellectual property, proprietary, or privacy rights of a third party or person (except to the extent such claim is based proximately on the use of the Advertiser Materials or Advertiser Data) or (b) any breach by Provider of any other material term or condition contained in this Agreement. Advertiser will promptly notify Provider of any claim or action with respect to any claim for indemnification hereunder, and Provider will undertake the defense or settlement and all related costs and expenses of any claim or action for which it has an indemnification obligation. Provider will have the right to settle or compromise any action to which its indemnification is applicable, except that Provider may not agree to any settlement without the prior written consent of Advertiser if such settlement would cause Advertiser to undertake any action, assume any liability, pay any monies, acknowledge any wrongdoing, or have a judgment entered against it. For any intellectual property claim related to the Deliverables and in addition to the general indemnification obligations herein, Provider, at its sole cost and expense, shall either procure for Advertiser the right to continue using the affected Deliverables or replace or modify the same so that it does not infringe or violate any third-party right, so long as the Deliverables still conform in all respects with this Agreement and any SOW. Notwithstanding the foregoing, Advertiser will have the right to undertake the defense of any claim asserted against it at Provider's expense in the event that: (i) Provider fails to assume the defense of such claim; (ii) Advertiser reasonably determines that an adverse outcome could be material to Advertiser's business; (iii) there are conflicts between Advertiser's and Provider's interests in such litigation; or (iv) Advertiser reasonably believes that Provider does not have the financial resources needed to satisfy its indemnification obligation in the event of an adverse outcome; provided that any settlement of such claim by Advertiser will be subject to the consent of Provider, not to be unreasonably withheld. Without limitation of the foregoing, Provider shall also maintain during the term of this Agreement adequate liability insurance (including, without limitation, for acts constituting copyright infringement or trademark infringement or dilution) commensurate with the Services.

11.2. *Advertiser Responsibility.* Advertiser will at all times indemnify and hold harmless Provider, its successors, licensees, and assigns from and against any and all damages, liabilities, judgments, costs, and expenses, including legal fees, arising out of any claims asserted by a third party arising from or relating to (a) the use of any Advertiser Materials or Advertiser Data, including that such Advertiser Materials or Advertiser Data infringes or misappropriates the intellectual property rights of a third party (except to the extent such claim is based proximately on the use of the Provider Documentation, Provider Data, and Provider Technology), or (b) any breach by Advertiser of any other material term or condition contained in this Agreement. Provider will promptly notify Advertiser of any claim or action with respect to any claim for indemnification hereunder, and Advertiser will undertake the defense or settlement and all related costs and expenses of any claim or action for which it has an indemnification obligation. Provider shall have the right to participate at its own expense in the defense of any claim against Provider. However, Advertiser will have the right to settle or compromise any action to which its indemnification is applicable, except that Advertiser may not agree to any settlement without the prior written consent of Provider if such settlement would cause Provider to undertake any action, assume any liability, pay any monies, acknowledge any wrongdoing, or have a judgment entered against it.

11.3. *Exclusive Remedy.* Fulfillment by a Party of its indemnification obligation(s) herein shall be, in addition to any termination or suspension remedies otherwise set forth in this Agreement, the sole remedy and the indemnifying Party's sole liability for any third-party claim that gives right to an indemnification obligation(s).

## 12. Term and Termination.

12.1. *Term.* This Agreement will take effect upon the Effective Date and continue for the period of time set forth in the SOW; and, if no such time period is specified, then for twelve (12) months thereafter. Following the expiration of the initial twelve-(12-) month period, this Agreement will renew only upon the mutual agreement of the Parties.

## 12.2. *Termination.*

- (a) *Termination for Convenience.* This Agreement may be terminated by written notice from Advertiser at any time, for any reason, during the first six (6) months after the Effective Date, and Advertiser shall receive a prorated refund of any prepaid Fees.
- (b) *Termination for Breach.* Notwithstanding the foregoing, this Agreement may be terminated by written notice from one Party to the other Party if the other Party breaches or fails to observe or perform any term or condition of this Agreement or a SOW (or any exhibit attached thereto), and does not cure such breach or failure within thirty (30) days after written demand. If Advertiser terminates based on Provider's breach, Advertiser shall receive a prorated refund of any prepaid Fees.

12.3. *Effect of Termination.* Upon termination or expiration of this Agreement for any reason, (a) all rights and licenses granted hereunder to Provider shall immediately terminate and Provider shall immediately cease all use of Advertiser's property, materials, and Data; (b) Advertiser's right and license to use the Provider Technology and Documentation shall immediately cease; and (c) each Party will immediately return (or, at the request of the other Party, destroy and not retain in compliance with best industry practices for the destruction or erasure of such information) the Data and Confidential Information of such other Party in its possession, custody, or control. If requested by Advertiser, Provider shall provide written confirmation of its compliance with the obligations set forth in this section. Provider shall provide reasonable transition assistance to Advertiser and any third-party provider or vendor selected by Advertiser to assist it in connection with a new service or solution offering to replace the Services, including the transfer and conversion of software, programming code, data, or databases that are the property of Advertiser. This assistance shall be provided at Provider's current labor rates or such other fee arrangement mutually acceptable to the Parties.

12.4. *Survival.* Sections 1 (Definitions), 6 (Compensation) (for amounts due and payable during the term of this Agreement), 7 (Proprietary Rights), 8 (Confidentiality) (for a period of [four (4)] years), 11 (Indemnification) (for a period of [two (2)] years), 12.3 (Effect of Termination), 12.4 (Survival), and 13 (Miscellaneous) of this Agreement shall survive, in accordance with their terms, the termination or expiration of this Agreement for any reason. Termination of this Agreement shall not prevent either Party from pursuing other remedies available to it under law or in equity, although nothing shall entitle either Party to damages for mere termination of this Agreement in accordance with its terms.

## 13. **Miscellaneous.**

13.1. *LIMITATION OF LIABILITY.* EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS HEREIN, NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS) ARISING OUT OF THIS AGREEMENT AND WHETHER OR NOT FORESEEABLE AND EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13.2. *Relationship of the Parties.* Provider acknowledges that, pursuant to this Agreement, Provider has been retained to act solely as an independent contractor to Advertiser and will not be treated as an employee of Advertiser. Provider will have no right, power, or authority to create any contract or obligation, or incur any liability on behalf of, or binding upon, Advertiser without Advertiser's prior written consent. This Agreement is not intended, and will not be construed, to render Advertiser and Provider as partners or joint venturers. Neither Party may make any written or oral representation about the other Party in connection with any press, advertising, or publicity material, or activities concerning the Parties' relationship arising out of this Agreement without the prior written consent of the other Party. Provider acknowledges that it will be solely responsible for the timely reporting and payment of all federal, state, and local taxes applicable to the payments that Provider receives from Advertiser. Provider (and any of its Personnel) will not be eligible to receive any vacation pay, sick pay, overtime pay, workers' compensation coverage, unemployment insurance, severance benefits, health insurance, retirement benefits, or other benefits of any type from Advertiser.

- 13.3. *Notices.* All notices and other communications in connection with this Agreement shall be in writing and shall be sent to each Party at the address identified at [REDACTED], or to such other addresses as may be designated by each Party in writing from time to time in accordance with this section, by registered or certified mail, postage prepaid, or by express courier service, service fee prepaid. All notices shall be deemed received: (a) immediately upon delivery, if hand-delivered; (b) five (5) Business Days after posting, if delivered by mail; or (c) the next Business Day after delivery by express courier service, if delivered by express courier service. In addition to the foregoing, Provider may provide Advertiser with information about the Provider Technology in electronic form, i.e., via an email address that Advertiser provides, so long as any such email communication(s) is limited to reporting on general user-wide Maintenance Releases, Permitted Downtime, or information related to or affecting use by all end users of the Provider Technology.
- 13.4. *Governing Law.* This Agreement shall be governed by the laws of the State of [REDACTED] without regard to conflicts of law provisions thereof, and each Party submits to the jurisdiction and venue of the State of [REDACTED] or Federal court generally serving the State of [REDACTED] with respect to the subject matter of this Agreement.
- 13.5. *Dispute Resolution.* Any claim arising out of or relating to performance under this Agreement that cannot be resolved by the Parties pursuant to informal mediation (lasting no more than thirty (30) days), shall be settled by final and binding arbitration before a single arbitrator and pursuant to the American Arbitration Association's Commercial Arbitration Rules and Procedures, as amended by the terms of this Agreement. The arbitrator selected shall have experience with and knowledge of the subject matter of the claim and dispute. The arbitration shall take place at a mutually agreed upon location and be conducted in strict confidence. Each Party shall bear its own costs and expenses and shall split the arbitrator's fees and any administrative fees, and the arbitration and all related proceedings and discovery will take place pursuant to a protective order entered by the arbitrator that adequately protects the confidential nature of the Parties' proprietary and confidential information. The arbitrator shall apply the substantive law of the State of [REDACTED] (exclusive of its choice of law principles), or if applicable, U.S. federal law (including federal arbitration law). The arbitrator's decision shall follow the plain meaning of the relevant documents and shall be final and binding. The award may be confirmed and enforced in any court of competent jurisdiction. The arbitrator's power to award damages shall be limited by the terms of this Agreement, and no arbitration award may provide a remedy beyond those permitted under this Agreement. Any award providing a remedy not permitted under this Agreement will not be valid and shall be vacated.
- 13.6. *Injunctive Relief.* Notwithstanding the provisions of Section 13.5, each Party acknowledges and agrees that any breach, threatened or actual, of any provision of this Agreement may cause irreparable injury to the other Party and that such injury would not be quantifiable in monetary damages alone. Accordingly, each Party acknowledges and agrees that the other Party would not have an adequate remedy at law and shall otherwise be entitled, in addition to other available remedies, to seek and be awarded an injunction or other appropriate equitable relief from a court of competent jurisdiction restraining any breach, threatened or actual, of such Party's obligations under any provision of this Agreement. In connection with this acknowledgment, each Party hereby waives any requirement that the other Party post any bond or other security in the event any injunctive or equitable relief is sought by or awarded to the other Party to enforce any provision of this Agreement.
- 13.7. *Force Majeure.* Each Party shall be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or Service(s), in whole or in part, as a result of a cause beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God, riots, acts of war, epidemics, governmental laws and regulations imposed or amended after the fact, fire, communication line failures, power failures, earthquakes, floods, blizzards, or other natural disasters (a "**Force Majeure Event**"), or changes in the scope of the Services or schedules for delivery or performance caused by such Force Majeure Event. In no event, however, shall internal labor (including strikes, lockouts, work stoppages or slowdowns, or the threat thereof) or production problems excuse timely performance by Provider of its obligations under this Agreement. Delays in providing the Services, or in meeting completion dates, schedules, or other obligations, due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of such events. Except as may be expressly provided in a SOW, in the

event such nonperformance continues for a period of sixty (60) days or more, either Party may terminate this Agreement by giving written notice thereof to the other Party. Notwithstanding the foregoing, upon the occurrence of any Force Majeure Event, the affected Party shall give the other Party written notice thereof as soon as reasonably practicable of its failure of performance, describing the cause and effect of such failure and the anticipated duration of its inability to perform.

13.8. *Severability and Waiver.* If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable. Neither any failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege.

13.9. *Assignability.* Provider may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Advertiser, which shall not be unreasonably withheld. Advertiser may assign this Agreement in its entirety to a surviving person or entity under a merger or acquisition of Advertiser, upon written notice to Provider and so long as such assignment does not expand the scope of the license(s) granted to Advertiser to use the Provider Technology or Documentation and the assignee agrees in writing to assume Advertiser’s obligations under this Agreement. Any assignment or delegation in derogation of these conditions will be null and void.

13.10. *Entire Agreement, Counterparts, and Modification.* This Agreement (including its SOW[s]) supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of this Agreement between the Parties with respect to its subject matter. Without limitation of the foregoing, no online terms of use, service, SOW, or other order documentation (e.g., purchase, work, or other order) shall supersede any term or condition of this Agreement without the prior approval and written acknowledgement of both Parties in a SOW. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the Parties. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same Agreement. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by both Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date written above.

\_\_\_\_\_ (“Advertiser”) \_\_\_\_\_ (“Provider”)

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

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



**EXHIBIT **  
**STATEMENT OF WORK**



**EXHIBIT**   
**SERVICE LEVEL TABLE**

“**Actual Uptime**” = Maximum Availability - Downtime

“**Actual Uptime Percentage**” means  $\frac{(Actual\ Uptime)}{Maximum\ Availability} * 100$

“**Downtime**” means any time that the **[Services]** are not Available (as defined above), excluding Permitted Downtime.

“**Emergency Maintenance Period**” means the period of time elapsed during any maintenance performed on the Services, which maintenance is required as a result of conditions beyond Provider’s reasonable control, not to exceed **[eight (8)]** hours per month. For clarification, any emergency maintenance that takes longer than **[eight (8)]** hours per month to complete will constitute Downtime.

“**Maximum Availability**” means the total number of minutes in the calendar month for which the Actual Uptime Percentage is calculated, e.g., 44,640 minutes in the month of July.

“**Permitted Downtime**” means the following:

- (a) Inoperability due to any scheduled or emergency maintenance (occurring during a Scheduled Maintenance Period or Emergency Maintenance Period) not to exceed sixteen (16) hours per month;
- (b) Problems caused by Advertiser’s telecommunications or internet services;
- (c) Problems caused by software or hardware not provided or controlled by Provider;
- (d) Problems due to Force Majeure Events, as described in the Agreement (not to exceed eight [8] hours per month);
- (e) Problems due proximately to acts or omissions of Advertiser, its agents, employees, or contractors;
- (f) Problems due to defects in software provided by Advertiser that Provider could not have discovered through the exercise of reasonable diligence prior to the failure;
- (g) Problems due to Advertiser’s failure to implement changes in equipment or software within a reasonable amount of time that have been reasonably recommended by Provider in writing as essential to maintaining service levels following an Advertiser directed change in the operating environment;
- (h) Inoperability or slowness without reasonable advance notice due to an Advertiser-driven increase in demand for system resources, whose limits were specified in the Agreement, that has not allowed Provider a reasonable time to accommodate; or
- (i) Problems due to operation under a Disaster Recovery Plan (provided that Provider has complied with its material obligations with respect thereto), or provision of the **[Services]** after expiration of the Agreement.

“**Scheduled Maintenance Period**” means the period of time elapsed during any scheduled maintenance performed by Provider on the Services that creates an outage and which, for avoidance of doubt, includes any scheduled maintenance (for which Provider has provided at least forty-eight [48] hours prior notice) that takes longer than eight (8) hours per month to complete.

Priority	Description	Response Time
Severity Level 3	[insert if different from definition]	1 hour
Severity Level 2	[insert if different from definition]	2 hours
Severity Level 1	[insert if different from definition]	4 hours

Actual Uptime Percentage:	Service Credit Percentage:
≥ 98.0% but < 99.5%	4% of Monthly Fees
≥ 97.0% but < 98.0%	8% of Monthly Fees
≥ 96.0% but < 97.0%	10% of Monthly Fees
≥ 94.0% but < 96.0%	12% of Monthly Fees
≥ 90.0% but < 94.0%	15% of Monthly Fees
< 90.0%	25% of Monthly Fees