

## STANDARD TERMS AND CONDITIONS

### 1. DEFINITIONS.

**1.1 “Engage Service”** means the on-line service delivered by Engage to Customer using the Software hosted by Engage and as made available by Engage through the access methods described in this Agreement. For the avoidance of doubt, as used herein Engage Service shall be understood to include the provision of access to the Software.

**1.2 “Engage Site”** means the website located at a unique URL to be provided by Engage to Customer where Users may access and use the Engage Service.

**1.3 “Confidential Information”** means a party's proprietary information in any form (whether or not marked "confidential") or which a reasonable person would know constitutes the Disclosing Party's proprietary information, including but not limited to, business plans, financial reports, customer lists and other customer information, descriptions of processes, and product development and marketing plans, as well as the terms of this Agreement. All Customer Data shall be considered Customer's Confidential Information. Confidential Information does not include information that: (a) was already lawfully known to the Receiving Party prior to disclosure by the Disclosing Party; (b) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) is independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. As used herein, "Receiving Party" means the party that receives the Confidential Information and "Disclosing Party" means a party that discloses such Confidential Information.

**1.4 “Customer Data”** means the data and content provided by Customer or its Users in the course of Customer's or its Users' access to, and use of, the Engage Service in accordance with this Agreement.

**1.5 “Documentation”** means the specifications and functional requirements published by Engage for the Engage Service and provided to Customer in either electronic, online help files or hard copy format.

**1.6 “Intellectual Property Rights”** means any and all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and other proprietary rights, whether registered or unregistered.

**1.7 “Software”** means Engage's proprietary computer software programs described in the Order, including any updates and new releases thereto, made available to Customer (and its Users) under this Agreement in connection with the Engage Service.

**1.8 “Users”** means Customer's and its Affiliates' employees, independent contractors and other individuals who are authorized by Customer or a Customer Affiliate to use the Engage Service on their behalf and have been supplied user identifications and passwords by Engage for this purpose.

### 2. SERVICE.

**2.1 License.** Subject to the terms and conditions of this Agreement, Engage grants to Customer (and its Users), during the Term (as defined below), a non-exclusive, non-transferable right to remotely access and use the Engage Service solely for the performance of Customer's and its Affiliates' internal business purposes in accordance with the Documentation, the limitations set forth in the Order, including any limit on the number of Users authorized to use the Engage Service, and the other terms and conditions of this Agreement.

**2.2 Service Contractors.** The Engage Service facilitates the ordering, tracking and approval of contractors with whom Customer has a preexisting relationship (each a “**Service Contractor**”). Customer is solely responsible for the Service Contractors it uses or engages with. Engage makes no warranties regarding the Service Contractors and shall have no liability with respect to the acts or omissions of such Service Contractors. In order to utilize the Engage Service with a particular Service Contractor, the Service Contractor will be required to register with Engage, provide information required by Engage, and access Engage's Service Contractor services using the methods provided by Engage.

**2.3 Support and Service Levels.** As part of the Engage Service and subject to the terms and conditions of this Agreement, including, without limitation, Customer's payment of all applicable and undisputed Fees, Engage will use commercially reasonable efforts to (a) ensure that the Software is accessible through the Engage Site over normal network connections, excepting downtime due to necessary maintenance and troubleshooting; (b) maintain the security of the Engage Service; and (c) provide telephone, e-mail and web-based support services during Engage's regular business hours for Software related questions. Without limiting the foregoing, Engage shall use commercially reasonable efforts to meet the service levels specified in *Exhibit A*. In the event that Engage fails to achieve the applicable service level, Customer will

be entitled, as its sole and exclusive remedy, to a credit in accordance with the terms set forth **Exhibit A**. Notwithstanding the foregoing, in the event of chronic SLA failure by Engage, which shall mean two (2) or more failures to achieve any Minimum Service Level in any 30-day period during the Term, Customer shall have the additional right to terminate the Engage Service and Software immediately upon written notice to Engage. Engage's system logs and other records shall be used for calculating any service level events. Customer is solely responsible for providing, at its own expense, all network access to the Engage Service, including, without limitation, acquiring, installing and maintaining all telecommunications equipment, hardware, software and other equipment as may be necessary to connect to, access and use the Engage Service. Implementation, consulting and other professional services are not included under this Agreement, but may be provided by Engage pursuant to a separate professional services agreement executed by the parties.

**2.4 Access and Users.** Each User will be assigned a unique user identification name and password ("User ID") for access to and use of the Engage Service. As between Engage and Customer, Customer shall be responsible for ensuring the security and confidentiality of its User IDs. User IDs are to be individually assigned to each User and may not be shared between or among multiple Users within Customer's organization. Customer's access and use of the Engage Service will be limited to the number of Users for which Customer has paid the applicable Fees. Customer will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Engage Service, and notify Engage promptly of any such unauthorized use. If Customer wishes to add additional Users, Customer will submit a written request for more Users. Upon Engage's written approval of the terms of any such additional order, Engage shall make the Engage Service available to the additional Users on the terms and conditions set forth in this Agreement.

**2.5 Proprietary Rights; Restrictions on Use.** The Engage Service, Software and Documentation, and all worldwide Intellectual Property Rights therein, are the exclusive property of Engage and its licensors. All rights in and to the Engage Service and Software not expressly granted to Customer in this Agreement are reserved by Engage and its licensors. As between Engage and Customer, Customer is responsible for all activities that occur under Customer's User accounts and will limit access to and use of the Engage Service to authorized Users. Except as expressly permitted in this Agreement or as otherwise authorized by Engage in writing, Customer will not, and will not permit any User to (a) modify, adapt, alter, translate, or create derivative works from the Software; (b) sublicense, lease, rent, loan, sell, distribute, make available or otherwise transfer the Engage Service to any third party, (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software; (d) knowingly interfere in any manner with the operation of the Engage Service; (e) remove, alter, or obscure any proprietary notices (including copyright notices) of Engage or its licensors contained within the Documentation or displayed in connection with the Engage Service (including Software); or (f) otherwise use the Engage Service or the Software except as expressly contemplated under this Agreement.

**2.6 Customer Data.** Customer hereby grants to Engage a non-exclusive, non-transferable right and license to use the Customer Data during the term of this Agreement for the limited purposes of performing Engage's obligations hereunder for the benefit of Customer. Engage shall not use the Customer Data for the benefit of any other customer of Engage, or for any other purpose, without Customer's prior approval. Subject to the rights granted in this Agreement, Customer retains all right, title and interest in and to the Customer Data, and Engage acknowledges that it neither owns nor acquires any additional rights in and to the Customer Data not expressly granted by this Agreement.

**2.7 Customer Indemnity.** Customer will defend, indemnify and hold harmless Engage and its affiliated companies and each of their respective officers, directors, employees and agents from and against any third party claims, liabilities, losses, damages, judgments, awards, fines, penalties, costs and expenses (including reasonable attorneys' fees and defense costs) which may be sustained or suffered by any of them to the extent arising out of (i) any allegation that Customer Data, provided by or through Customer or its Users hereunder, infringes upon or misappropriates the proprietary rights of any third party, (ii) Customer's willful misconduct or gross negligence in its use of Engage Services, (iii) Engage's use of any Customer Data in accordance with this Agreement, or (iv) Customer's use of the Engage Services in violation of applicable law.

**2.8 Changes to Services.** As part of the Services, Engage shall provide, manage, and install all updates, upgrades, and other changes made generally available to other customers of the Engage Service. Supplier warrants that each such update, upgrade or change will not require Customer or any Service Contractor to update, upgrade, or otherwise change any of their software or equipment required to use the Engage Service and Software, and will not require Customer or any Service Contractor to incur additional costs or expenses; provided, that Customer and Service Contractors are using the most up-to-date versions of operating systems and other third party platforms to access the Services.

**2.9 Protection of Customer Data.** Engage will establish, institute, monitor, maintain, and comply with a written system and information security program (the "**Data Safeguards**") that includes administrative, technical, and physical protocols and controls designed to safeguard physical and electronic access to the Customer Data, and designed to prevent, detect, respond to, and recover from any unauthorized disclosure, access, destruction, loss, damage, alteration or use of the

Customer Data. The Data Safeguards will be no less rigorous than the most stringent of (a) Engage's Data Safeguards for its customer's data as of the Effective Date, and (b) any systems or data security requirements specified elsewhere in this Agreement or required by applicable law. If Engage utilizes a third party cloud service provider to host the Services, the provider shall comply with ISO 27001:2013 (Information technology – Security techniques – Information security management systems – Requirements), ISO 27002:2013 (Information technology – Security techniques – Code of practice for information security management), ISO 27017:2015 (Information technology — Security techniques — Code of practice for information security controls based on ISO/IEC 27002 for cloud services) and, ISO 27018:2014 (Information technology -- Security techniques -- Code of practice for protection of personally identifiable information (PII) in public clouds acting as PII processors), Engage will review and test (and re-test as necessary) at least annually the Data Safeguards to assess adherence to and the effectiveness of the Data Safeguards, and implement action plans to remediate identified vulnerabilities and deficiencies.

### **3. FEES AND PAYMENT.**

**3.1 Fees.** The fees payable to Engage hereunder for use of the Engage Service under this Agreement shall be as stated in the applicable Order ("**Fees**"). Engage may update pricing for each Renewal Term by providing Customer with at least thirty days' notice in advance of the applicable Renewal Term.

**3.2 Payment Terms.** Engage will invoice Customer for Fees pursuant to the Order, and Customer will pay all properly invoiced and undisputed Fees hereunder with thirty days after receipt of the applicable invoice. Upon thirty (30) days prior written notice and Customer's failure to cure, Engage reserves the right (in addition to any other rights or remedies Engage may have) to discontinue the Engage Service and suspend all User ID's and Customer's access to the Engage Service if any undisputed Fees are more than thirty (30) days overdue until such amounts are paid in full. All payments must be made in U.S. dollars. All Fees due hereunder are exclusive of, and Customer shall pay, all sales, use and other taxes, export and import fees, customs duties and similar charges applicable to the transactions contemplated by this Agreement, except for taxes based upon Engage's net income.

**3.3 Third Party Fees.** If customer requests Engage to use or attach (via API, FTP or other) to a Third-Party System and the Third Party charges Engage any fees, these fees will be documented as a pass through cost to the Customer with an additional 10% administration cost for such service request.

### **4. WARRANTY DISCLAIMER.**

**4.1 Performance.** During the Term, Engage warrants that the Engage Service and the Software, when used as permitted by Engage and in accordance with the instructions in the Documentation, will operate in accordance with the terms of this Agreement and as described in the Documentation in all material respects. Engage does not warrant Customer's use of the Engage Service will be error-free or uninterrupted. Engage will, at its own expense and as its sole obligation and Customer's exclusive remedy for any breach of this warranty, promptly, but in no event later than 3 business days from notification of the warranty issue, correct any reproducible error in the Engage Service reported to Engage by Customer in writing during the Term. If Engage is unable to promptly correct such error, Customer shall have the right to terminate this Agreement immediately upon written notice to Engage and Engage shall refund to Customer the Fees paid for such Engage Service for the period during which the Engage Service did not conform to the warranty.

**4.2 Disclaimers.** THE EXPRESS WARRANTIES IN SECTION 4.1 ARE IN LIEU OF, AND ENGAGE HEREBY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY REGARDING THE SOFTWARE AND THE ENGAGE SERVICE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN SECTION 4.1, ACCESS TO THE ENGAGE SERVICE IS PROVIDED "AS IS" WITH ALL FAULTS.

**5. LIMITATION OF LIABILITY.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE ENGAGE SERVICE OR THE SOFTWARE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO ENGAGE HEREUNDER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. THE FOREGOING LIMITATIONS OF LIABILITY WILL NOT APPLY TO THE INDEMNITY OBLIGATIONS UNDER SECTION 7 OR IN THE EVENT OF A PARTY'S WILLFUL OR INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE.

## 6. CONFIDENTIALITY.

**6.1 Protection.** The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

**6.2 Exceptions.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) approved in writing by the Disclosing Party; or (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding against the Disclosing Party, provided that the Receiving Party shall use commercially reasonable efforts to obtain assurances that any Confidential Information so disclosed will be afforded confidential treatment. Further, if the Receiving Party becomes legally compelled to disclose any of the Disclosing Party's Confidential Information, the Receiving Party shall, if permitted by law, provide prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy. If, after providing such notice as required herein, the Receiving Party remains required by law to disclose any of the Disclosing Party's Confidential Information, the Receiving Party shall disclose no more than that portion of such Confidential Information which, on the advice of the Receiving Party's outside legal counsel, the Receiving Party is legally required to disclose and shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

**6.3 Return of Information.** Except as otherwise expressly provided in this Agreement, the Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party or upon the expiration or termination of this Agreement; provided, however, the Receiving Party may retain one (1) archival copy for record retention purposes and compliance with applicable law, which archival copy shall, at all times, be subject to the protection provisions of Section 6.1. Upon the request of the Disclosing Party, the Receiving Party will certify in a writing that it has fully complied with its obligations under this Section 6.3.

**6.4 Injunctive Relief.** Each party acknowledges that a breach or threatened breach of this Section 6 would cause irreparable harm to the non-breaching party, the extent of which would be difficult to ascertain. Accordingly, each party agrees that, in addition to any other remedies to which a party may be legally entitled, the non-breaching party shall have the right to seek immediate injunctive or other equitable relief, without the necessity to post bond or other security, in the event of a breach of this Section 6 by the other party or any of its employees or agents.

**7. INTELLECTUAL PROPERTY INDEMNIFICATION.** Engage shall indemnify, defend, and hold harmless Customer and its affiliates and each of their respective officers, shareholders, directors, employees, agents, representatives, Users, and customers from and against any and all claims, demands, proceedings, suits, and actions, including any related liabilities and attorneys fees arising out of, or resulting from a claim from an unaffiliated third party based on any actual or alleged infringement or misappropriation of such third party's Intellectual Property Rights by the Software, Engage Service, or any other product or service delivered pursuant to this Agreement. The foregoing obligations are conditioned on Customer (a) notifying Engage promptly in writing of such action, (b) giving Engage sole control of the defense thereof and any related settlement negotiations, and (c) cooperating and, at Engage's request and expense, assisting in such defense. In addition to the foregoing indemnification obligations, if the Engage Service (including the Software) becomes, or in Engage's opinion is likely to become, the subject of an infringement claim, Engage may, at its option and expense, either (i) procure for Customer the right to continue using the Engage Service, (ii) replace or modify the Engage Service so that it becomes non-infringing, or (iii) terminate this Agreement upon written notice to Customer and refund Customer the Fees paid for such Engage Service during the twelve (12) month period preceding the effective date of termination. Notwithstanding the foregoing, Engage will have no obligation under this Section 7 or otherwise with respect to any infringement claim to the extent based upon (A) any use of the Engage Service (including the Software) not in accordance with this Agreement or the Documentation or other written communication to Customer, (B) any use of the Engage Service (including the Software) in combination with other products, equipment or software not intended by Engage to be used with the Engage Service (including the Software) provided such products, equipment or software are specifically identified to Customer, (C) any Customer Data, or (D) any modification of the Engage Service (including the Software) by any person other than Engage or its authorized agents or subcontractors unless such third-party modification was authorized in writing by Engage. As used herein, "Affiliates" means any other entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Customer; as used herein, entity shall mean any company, partnership, joint

venture or other form of enterprise, domestic or foreign, and control shall mean, with respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities (or other ownership or membership interest), by contract or otherwise.

## **8. TERM; TERMINATION.**

**8.1 Term.** Unless otherwise indicated in the Order, the initial term of this Agreement will begin on the Effective Date and will continue for a period of one year, (“**Initial Term**”), unless terminated earlier as provided herein. Thereafter this Agreement will automatically renew for additional one year periods (each, a “**Renewal Term**”) unless a party notifies the other party in writing of its intent not to renew at least thirty (30) days prior to the end of the Initial Term or the then-current Renewal Term. The Initial Term and all Renewal Terms are collectively referred to as the “**Term**.”

**8.2 Termination.** Either party may terminate this Agreement if the other party breaches any material provision of this Agreement and does not cure such breach within thirty (30) days after receiving written notice thereof.

**8.3 Effects of Termination.** Upon termination or expiration of this Agreement for any reason, any undisputed amounts owed to Engage under this Agreement before such termination or expiration will be immediately due and payable, all rights granted by Engage to Customer in this Agreement will immediately cease to exist and Customer must discontinue all use of the Engage Service and Software and return to Engage or destroy all copies of Documentation and other Engage Confidential Information in Customer’s possession or control. Sections 1, 2.5, 2.6, 2.7, 4.2, 5, 6, 7, 8.3 and 9 together with any accrued payment obligations, will survive expiration or termination of this Agreement for any reason. Notwithstanding the foregoing, Engage will provide to Customer, for a period of ninety (90) days following the expiration or termination of this Agreement, access to the Engage Service so that Customer may download any Customer Data and any reports containing such Customer Data at no additional cost to Customer. Following such ninety (90) day period, Engage will, in good faith and upon reasonable commercial terms, provide reasonable assistance to Customer with regards to Customer’s access and/or downloading of such Customer Data and/or reports.

## **9. GENERAL**

**9.1 Non-Exclusive.** This Agreement shall not be construed to limit or prohibit Engage in any manner or fashion in providing products and/or services of any type of nature including those identical to the Engage Service to any other customer in its sole discretion.

**9.2 Assignment.** Neither party may assign or transfer, by operation of law or otherwise, any of its rights under this Agreement (including the license rights granted to Customer to access the Engage Service) to any third party without the other party’s prior written consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, a Party may assign its rights and obligations under this Agreement to a parent, affiliate, or subsidiary, or to a successor, whether by way of merger, sale of all or substantially all of its assets or otherwise. Any attempted assignment of this Agreement not in accordance with this subsection shall be null and void.

**9.3 Relationship of Parties.** The relationship of the parties established under this Agreement is that of independent contractors and neither party is a partner, employee, agent or joint venture partner of or with the other, and neither party has the right or authority to assume or create any obligation on behalf of the other party.

**9.4 Force Majeure.** If and to the extent that a Party’s performance of any of its obligations hereunder is prevented, hindered or delayed by (a) acts of war, terrorism, civil riots or rebellions, (b) quarantines, embargoes and other similar unusual governmental action, or (c) extraordinary, unforeseeable elements of nature or acts of God (each, a “Force Majeure Event”), and such non-performance, hindrance or delay could not have been prevented by the non-performing party’s reasonable precautions or commercially accepted processes, or could not reasonably be circumvented by the non-performing party through the use of substitute services, alternate sources, work-around plans or other means, then the non-performing party will be excused for such non-performance, hindrance or delay of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues and such party continues to recommence performance to the greatest extent possible without delay. The Party whose performance is prevented, hindered or delayed by a Force Majeure Event will notify the other party of the occurrence of the Force Majeure Event within twenty four (24) hours of its commencement and describe in reasonable detail the nature of the Force Majeure Event. Notwithstanding anything to the contrary, strikes, lockouts or labor disputes involving Engage personnel that are not of a universal nature, changes in applicable law (except any changes that would render the performance or the receipt or use of the Engage Services illegal), the failure by an Engage agent, vendor or contractor to provide any goods to, or perform any services for, Engage (other than to the extent attributable to a Force Majeure Event) or the breach by an Engage agent, vendor or contractor of any of its obligations to Engage will not qualify as Force Majeure Events. The fees payable by Customer will be reduced in an

equitable manner so that Customer is not responsible for the payment of any amount for use of the Engage Services that Customer does not receive as a result of any Force Majeure Event.

**9.5 Notices.** All notices, consents, and approvals under this Agreement must be delivered in writing by courier or internationally recognized overnight delivery service, by electronic means (i.e., email), or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth on the first page of this Agreement or as otherwise provided by a party hereunder to the other party, and will be effective upon receipt or when delivery is refused. Either party may change its address by giving notice of the new address to the other party.

**9.6 Governing Law and Venue.** This Agreement will be governed by and interpreted in accordance with the laws of Colorado, without regard to its choice of laws rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The Uniform Computer Information Transactions Act (UCITA) shall not govern this Agreement even if adopted as part of the laws of the State of Texas and the parties hereby opt out of the provisions of UCITA. Any action or proceeding arising from or relating to this Agreement shall be brought in a federal or state court in Denver, Colorado, and each party irrevocably submits to the exclusive jurisdiction and venue of any such court in any such action or proceeding.

**9.7 Remedies.** Except as expressly provided herein, the parties' rights and remedies under this Agreement are cumulative. If any legal action is brought by a party to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

**9.8 Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**9.9 Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, Section 5 will remain in effect notwithstanding the unenforceability of any provision in Section 4.2.

**9.10 Publicity.** Engage may not name Customer as a customer, or use Customer's logo, name or trademark in any Engage marketing materials, or develop any marketing content or otherwise based on Customer's experiences as an Engage customer without Customer's prior written consent and approval of the same in each instance.

**9.11 Construction.** The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to." In the event of a conflict of terms in this Agreement, the following is the order of precedence in interpretation: (i) Order Form, (ii) this Agreement, (iii) an Exhibit.

**9.12 Entire Agreement.** This Agreement (including all exhibits and attachments) constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral regarding such subject matter. This Agreement may be amended only by a written document signed by both parties. Any click wrap, shrink wrap or browse wrap agreements, including click wrap, shrink wrap or browse wrap agreements governing the Engage Service or Software, entered into by Customer after its signature on this Agreement shall have no force or effect. The Parties hereby acknowledge and agree that any such click wrap, shrink wrap, or browse wrap agreement is null and void.

**EXHIBIT A**  
**SERVICE LEVELS**

<b>Service Level</b>	<b>Description and Measurement Method</b>	<b>Target Service Levels</b>	<b>Minimum Service Levels</b>
System Availability	The percentage time that the Engage Service is in service and fully available for access and data input by Users	100%	98%
Support Response Times (24-hour)	Response to Fatal Issues	1 hour	1 hour for Severity 1 Problems; 24 hours for Severity 2 problems; 72 hours for all other problems.
Help Desk Response Times (9 am – 6pm, MST)	Response to telephone call or e-mails.	1 hour	1 hour for Severity 1 Problems; 24 hours for Severity 2 problems; 72 hours for all other problems.

**Classification of Problems or Support Calls:**

- (1) Severity 1 (“**Fatal**”) – A problem for which there is no known Workaround and which (a) prevents the execution of a Primary Function, or (b) results in data corruption or crash.
- (2) Severity 2 (“**Critical**”) – A problem for which (a) causes difficulty in execution of a Primary Function or (b) prevents the execution of a Secondary Function, and as to any of the preceding, for which there is no known Workaround.
- (3) Severity 3 (“**Serious**”) – A problem for which causes difficulty in execution of a Secondary Function, but for which there is a Workaround, although with significant User inconvenience.
- (4) Severity 4 (“**Minor**”) – A problem which causes inconvenience, but for which there is an acceptable Workaround.

**Definitions:**

“**Excused Delay**” means any failure or delay which is beyond the reasonable control of Engage, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, telecommunications failures or delays, computer failures involving hardware or software not within Engage’s possession or reasonable control, and acts of vandalism (including network intrusions and denial of service attacks), but only if such unavailability results notwithstanding the exercise of reasonable care and diligence to avoid or mitigate the same in anticipation of or in response to such causes. Excused Delay shall also include downtime due to necessary maintenance and troubleshooting.

“**Primary Function**” means a function that is frequently used or an essential function of the Engage Service.

“**Secondary Function**” means a function that is not frequently used or does not represent an essential function of the Engage Service.

“**Workaround**” means a feasible change in operating procedures whereby a User can avoid the deleterious effects of a non-conformance without material inconvenience.

### **Exclusive Remedy:**

If Engage fails to meet any of the above “Minimum Service Levels” during any calendar month, and such failure is not excused due to any Excused Delay, Customer shall promptly notify Engage in writing of such failure, but in any event within fifteen (15) days following the end of the applicable month, and Customer may choose to request a service credit to be applied against future payments that become due from Customer to Engage under this Agreement. Such service credit shall be computed as follows:

- For System Availability: The ratio of unavailable minutes to total potentially available minutes (net of Excused Delays) in the applicable calendar month during which the Minimum Service Level was not met multiplied by the monthly fees due for such month; provided, however, in no event will the service credit due exceed ten percent (10%) of the applicable monthly fees.
- For Support and Help Desk Response Times: One percent (1%) for each full hour during any calendar month that the Minimum Service Level was not met multiplied by the monthly fees due for such month; provided, however, in no event will the service credit due exceed ten percent (10%) of the applicable monthly fees.

Subject to Customer’s right to terminate the Agreement for chronic SLA failures as set forth in Section 2.3, the foregoing credits will be Customer’s sole and exclusive remedy with respect to any unscheduled downtime or any failure by Engage to meet any Minimum Service Level and in no event will the cumulative service credits for any calendar month exceed twenty percent (20%) of the applicable monthly fees.