



PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PURCHASING AND/OR USING PRODUCTS OR SERVICES FROM FAI. BY USING FAI PRODUCTS OR SERVICES, CLIENT SIGNIFIES ITS ASSENT TO AND ACCEPTANCE OF THIS AGREEMENT AND ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS AGREEMENT. AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF CLIENT DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT USE FAI PRODUCT OR SERVICES.

This **MASTER SERVICES AGREEMENT** (this “**MSA**”) is between Client and Foundation, Inc (“**FAI**”) and addresses the legal terms that apply to the purchase of FAI Products and Services. The term “**MSA**” will be deemed to include the Service Level MSA set forth in Exhibit A (“**SLA**”), and any Order Form other attachments, addendums, or exhibits subsequently entered under and incorporated into this MSA.

WHEREAS, FAI is in the business of providing access to its software-as-a-service offering to its clients, and of providing consulting, development, implementation, customization and support services related to such software solutions; and

WHEREAS, Client is desirous of using FAI’s software-as-a-service offering provided by FAI in relation to its operations, and Client hereby agrees that all use of such offering by Client is subject to the following terms stipulated in this MSA and the Documentation.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. FAI Products and Services.

- a. Provision of Products. Subject to the terms and conditions of this MSA, FAI will provide Client with the online software-as-a-service products and services on a subscription basis for the applicable subscription term set forth in the Order Form (“**Subscription Term**”), and such other products and services, as more particularly described in an order form (each, an “**Order Form**”)(collectively, the “**FAI Product(s)**”). FAI Products include FAI Software (as defined below). Each Order Form will be incorporated into, and is fully governed by, this MSA upon execution of the Order Form by both parties. In the event of any conflict or inconsistency between this MSA and an Order Form, this MSA shall control, unless the Order Form expressly amends this MSA.
- b. Access to Products. During the Subscription Term, Client may access and use FAI Products on a non-exclusive and non-transferrable basis, solely for its internal business purposes, and only in accordance with the terms and conditions of this MSA, the applicable Order Form, and any end user technical documentation provided by FAI for such FAI Products (“**Documentation**”). To the extent the FAI Products include any downloadable software, agents, SDKs, APIs, or other code in connection with the FAI Products (“**FAI Software**”), FAI grants to Client a non-exclusive, non-transferable, non-sublicensable, limited right and license to use the FAI Software during the applicable Subscription Term solely as reasonably necessary for Client’s use of the FAI Products provided on a software-as-a-service basis in accordance with this MSA. For clarity, except for FAI Software, FAI’s software products are provided on a remote, software-as-a-service basis only.
- c. Authorized Users. Client may permit its authorized employees, agents, independent contractors and consultants to use the FAI Products on its behalf (“**Authorized Users**”) during the Subscription Term, provided Client remains responsible for the acts and omissions of each such Authorized User. Use of the FAI Products by Client in the aggregate must be within the restrictions set forth in the applicable Order Form (if any). If Client is given passwords to access FAI Products on FAI’s systems, Client shall require that all Authorized Users keep user ID and password information strictly confidential and not share such information with any unauthorized person, and Client shall maintain commercially reasonable security policies and safeguards designed to protect such information. Client shall be responsible for any and all actions taken using Client’s accounts and passwords.
- d. Services. FAI shall use commercially reasonable efforts to provide to Client the professional services identified in an Order Form (the “**Services**”). FAI will perform the Services with skills, care and diligence consistent with generally recognized industry standards for similar services.
- e. Use by Affiliates. If applicable, each of Client’s Affiliates (defined below) identified on an Order Form will be entitled to access and use the applicable FAI Products in accordance with this MSA and the applicable Order Form during the Subscription Term; provided that Client shall remain responsible to FAI for the actions and omissions of each such Affiliate (and each of such Affiliate’s Authorized Users). The terms of this MSA will govern, and will be incorporated by reference in, each such Order Form as if this MSA were separately

executed by the applicable Client Affiliate, and the term “Client” as used in this MSA will be deemed as applying to such Client Affiliate for the purposes of such Order Form. “Affiliate” means an entity that, directly or indirectly, controls, is controlled by, or is under common control with a party. As used herein, “control” means the power to direct the management or affairs of an entity or the beneficial ownership of fifty percent (50%) or more of the voting equity securities or other equivalent voting interests of an entity.

f. Generative AI Products

- i. General. Client may opt-in to the optional components of the FAI Products that utilize generative artificial intelligence technologies (the “Gen AI Products”). IF CLIENT OPTS IN TO USE OF THE GEN AI PRODUCTS, CLIENT MUST READ THESE TERMS OF USE CAREFULLY TO ENSURE THAT CLIENT UNDERSTANDS EACH PROVISION.
- ii. Use of Gen AI Output. Subject to Client’s compliance with this MSA, Client may use the output of the Gen AI Products (“Gen AI Output”) for any lawful purpose (except as described below), on a limited, royalty-free basis, provided that Client acknowledges and agrees: (A) that Client’s use of the Gen AI Products and the Gen AI Output does not transfer to Client ownership of any intellectual property rights in the FAI Products or Gen AI Output and that (B) FAI may, by notice to Client at any time, limit Client’s use of the Gen AI Output or require Client to cease using them (and delete any copies of them) if FAI forms the view, in its sole and absolute discretion, that Client’s use of the Gen AI Output may infringe the rights of any third party. Client shall not represent that Gen AI Output was human-generated or use the Gen AI Output to train Client’s own machine learning models.
- iii. DISCLAIMER. DUE TO THE NATURE OF MACHINE LEARNING, THE GEN AI OUTPUT MAY NOT BE UNIQUE ACROSS USERS AND THE GEN AI PRODUCTS MAY GENERATE THE SAME OR SIMILAR OUTPUT FOR OTHER USERS. USE OF GEN AI PRODUCTS MAY RESULT IN INCORRECT GEN AI OUTPUT THAT DOES NOT ACCURATELY REFLECT REALITY. CLIENT MUST EVALUATE THE ACCURACY OF ANY GEN AI OUTPUT AS APPROPRIATE FOR CLIENT’S USE CASE, INCLUDING BY USING HUMAN REVIEW OF THE GEN AI OUTPUT. CLIENT UNDERSTANDS AND AGREES THAT THE GEN AI OUTPUT MAY CONTAIN “HALLUCINATIONS” AND MAY BE INACCURATE, OBJECTIONABLE, INAPPROPRIATE, OR OTHERWISE UNSUITED TO CLIENT’S PURPOSE, AND CLIENT AGREES THAT THE GEN AI OUTPUT IS PROVIDED “AS IS” AND FAI SHALL NOT BE LIABLE FOR ANY DAMAGES CLIENT OR ANY THIRD PARTY ALLEGES TO INCUR AS A RESULT OF OR RELATING TO ANY GEN AI OUTPUT OR OTHER CONTENT GENERATED BY OR ACCESSED ON OR THROUGH GEN AI PRODUCTS.

2. **Ownership, Data and Use.**

- a. Ownership. As between FAI and Client, Client agrees that FAI owns and shall retain all rights, title, interest, and proprietary and business methods and intellectual property rights, including patent, copyright, trade secret, trademark and other intellectual and proprietary rights, anywhere in the world, in the original and all copies of the FAI Products and any improvements and derivative works thereof. Client shall not acquire any rights, express or implied, in the FAI Products or any improvements or to any component(s) or derivative works thereof, other than those specified in this MSA. FAI may use, sell, assign, transfer, and license copies of and rights relating to the FAI Products and improvements to third parties free from any claim of the Client.
- b. Limited Rights; Restrictions on Use. Client acknowledges that the access to the FAI Products granted hereunder is limited and that the FAI Products shall be used for Client’s internal business purposes by its Authorized Users. Client shall not assign, sell, license, re-license, sublicense, rent, lease, publish, display, distribute, permit unauthorized use or otherwise transfer this MSA, the FAI Products, Documentation or any improvements or derivative works to any person or entity for any purpose or permit use of the FAI Products for any use not specifically authorized by this MSA. Without limiting the foregoing, Client will not, and will not permit any third party to: (i) use the FAI Products in a manner that violates any applicable laws, terms applicable to the use of a particular service as provided in an Order Form, and other requirements provided by FAI (collectively, “FAI Policies”); (ii) knowingly (including actual knowledge and knowledge that Client would reasonably be expected to gain with reasonable care and diligence) use the FAI Products in a manner that infringes, misappropriates or otherwise violates any party’s intellectual property or privacy rights; (iii) modify or create derivative works of the Services; (iv) reverse assemble, reverse compile, decompile, translate, engage in model extraction or stealing attacks, or otherwise attempt to discover the source code or underlying components of models, algorithms, and systems of the FAI Products (except to the extent such restrictions are contrary to applicable law); (v) use the FAI Products to develop competing products or services; (vi) use any method to extract data from the FAI Products other than as authorized to use the FAI Products as

contemplated in the applicable Order Form; (vi) remove or obscure any copyright or proprietary or other notice contained in any FAI Product or Documentation; (vii) propagate any virus, Trojan horse, or other malware or programming routine intended to damage any system or data; (viii) access or use any FAI Products in a manner intended to circumvent or exceed service account limitations or requirements; (ix) use any FAI Products in a manner that violates any applicable law, regulation, or legal requirement or obligation; (x) use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark any FAI Products; (xi) post, upload, transmit or provide any Client Data that FAI reasonably deems to be unlawful, harmful, abusive or otherwise objectionable; or (xii) use the FAI Products except as expressly permitted by this MSA.

- c. **Client Data.** Client acknowledges and agrees that FAI will, in performing its obligations pursuant to this MSA, be dependent upon or use content, material, documents and other information provided by Client and processed by the FAI Products (the “**Client Data**”) without any independent investigation or verification thereof, and that FAI shall be entitled to rely upon the accuracy and completeness of the Client Data in providing the FAI Products and Services. The Client Data is and shall remain the sole and exclusive property of Client and all right, title, and interest in the same is reserved by and to Client. Client hereby grants to FAI a limited, non-exclusive, royalty-free, worldwide license to use, display, access and perform all acts with respect to the Client Data as may be necessary to provide the FAI Products and Services and create improvements to the FAI Products. Client hereby also grants to FAI a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use the Client Data related to Client’s use of the FAI Products in aggregated and anonymized form (the “**Aggregated Statistics**”) for any lawful purpose, including to compile statistical and performance information related to the provision and operation of the FAI Products and to create improvements to the FAI Products. As between FAI and Client, all right, title, and interest in the Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by FAI. Client acknowledges that FAI may compile the Aggregated Statistics based on the Client Data input into the FAI Products. Client agrees that FAI may use the Aggregated Statistics to the extent and in the manner permitted under applicable law. Client understands that FAI cannot guarantee that unauthorized third parties will never be able to defeat FAI’s security measures or use the Client Data for improper purposes. Client acknowledges that it provides the Client Data at its own risk.
- d. **General.** Client will perform all of its responsibilities and obligations set forth in the applicable Order Form and will further reasonably cooperate with FAI in timely facilitating the provision of the FAI Products by FAI, including, when requested by FAI, providing FAI with timely access to its personnel and systems, and causing its Authorized Users, other service providers and vendors to reasonably cooperate with FAI. If FAI needs to access and use any third-party hardware or software licensed by Client in order for FAI to provide the FAI Products, Client will provide FAI with the necessary rights and/or licenses to access and use such software and hardware at no expense to FAI. Client will be responsible for disaster recovery, and business continuity related to Client’s business, including backing up its data on Client systems.
- e. **Additional Obligations.** Client agrees to immediately report to FAI any unauthorized use or infringement of the FAI Products that comes to its attention.
- f. **Suspension Rights.** FAI hereby reserves the right, in its reasonable discretion, to suspend Client’s access to and use of the FAI Products and Documentation if FAI reasonably suspects or detects any violation of this **Section 2** connected with the use of the FAI Products or Documentation by Client or in order to protect the security of the FAI Products.

3. Warranties, Disclaimers, and Restrictions.

- a. **FAI Warranty; Disclaimer.** FAI represents and warrants that it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization, and that it has the rights necessary to enter into and perform all of its obligations under this MSA. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS **SECTION 3(a)**, THE SERVICES, THE FAI PRODUCTS AND DOCUMENTATION PROVIDED BY FAI ARE PROVIDED “AS IS,” “AS AVAILABLE,” AND FAI, ON BEHALF OF ITSELF AND ITS LICENSORS, MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES ABOUT THE SERVICES AND/ OR THE FAI PRODUCTS OR OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR THAT THE OPERATION OF THE FAI PRODUCTS OR SERVICES WILL BE UNINTERRUPTED AND/OR ERROR FREE. FAI DOES NOT AUTHORIZE ANYONE OR ENTITY TO MAKE A WARRANTY ON FAI’S BEHALF, AND CLIENT MAY NOT RELY ON ANY STATEMENT OF WARRANTY AS A WARRANTY BY FAI. THE PARTIES ACKNOWLEDGE AND AGREE THAT THERE ARE CERTAIN RISKS INHERENT TO THEIR ENGAGEMENT HEREUNDER, AND THAT CLIENT’S USE OF, AND FAI’S PROVISION OF, THE SERVICES AND THE FAI PRODUCTS MAY NOT RESULT IN ANY SPECIFIED RESULT.

THE PARTIES ACKNOWLEDGE AND AGREE THAT THE OUTPUTS OF THE SERVICES AND FAI PRODUCTS ARE

INTENDED TO BE INFORMATIVE AND SHOULD NOT BE CONSTRUED AS ADVICE. IT IS THE SOLE RESPONSIBILITY OF CLIENT AND ITS AUTHORIZED USERS TO REVIEW THE OUTPUT OF THE FAI PRODUCTS TO DETERMINE IF THE OUTPUT IS ACCURATE AND APPROPRIATE FOR CLIENT'S USE CASE OR REQUIREMENTS, INCLUDING BY USING HUMAN REVIEW. ACCORDINGLY, FAI HEREBY DISCLAIMS, AND CLIENT, ON BEHALF OF ITSELF AND ITS CUSTOMERS, HEREBY EXPRESSLY RELIEVES FAI FROM, ANY CLAIMS, DAMAGES, COSTS, OR LIABILITIES THAT MAY ARISE FROM OR RELATE TO ANY ACTS OR OMISSIONS MADE BY CLIENT OR ITS USERS BASED IN WHOLE OR IN PART ON ANY OUTPUT OF THE FAI PRODUCTS.

IN ADDITION, FAI MAKES NO WARRANTIES AND WILL HAVE NO LIABILITY FOR ANY THIRD-PARTY PRODUCTS OR SERVICES WHATSOEVER.

- b. Client Warranty. Client represents and warrants that (i) it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation, and that it has the power and authority to enter into and perform all of its obligations under this MSA; (ii) Client is the owner or valid licensee of the Client Data, and has secured all necessary licenses, consents, authorizations and waivers for the use of the Client Data; (iii) Client will not use the FAI Products for any unauthorized and unlawful purpose; (iv) Client will not engage in any activity that interferes with or disrupts the FAI Products; and (v) Client will not reproduce, duplicate, copy, transfer, license, rent, sell, trade or resell the FAI Products for any purpose whatsoever outside of the scope of the this MSA.

4. Fees, Payment and Taxes

- a. Fees. Client shall pay the fees as set forth in the applicable Order Form (the "**Fees**") during the applicable Subscription Term to FAI in consideration of the Services and FAI Products. The Fees shall be invoiced in accordance with the applicable Order Form and, unless otherwise set forth therein, shall be due and payable thirty (30) days after receipt. Past due invoices shall incur interest from the invoice date in the amount of one-and-a-half percent (1.5%) per month or the maximum amount permitted by law, whichever is lesser. If any of the invoices are delinquent, FAI may cease to provide the Services or FAI Products following ten (10) days written notice, until such invoices are paid in full.
- b. Taxes. The Fees do not include any taxes, assessments or service provider fees (such as payment processor or vendor management) and Client agrees to pay or reimburse FAI for such amounts. Client shall be solely responsible for all applicable taxes, assessments, and other fees arising under this MSA or the licenses or services provided hereunder, except for taxes imposed on FAI's income, franchise, and payroll. Client must pay the Fees without withholding or deduction. If Client is required to withhold or deduct any taxes from the Fees, then Client agrees to increase the amount payable to FAI by the amount of such taxes so that FAI receives the full amount of all Fees and expenses.
- c. Costs. If applicable, Client will reimburse FAI for its necessary and reasonable, documented, out-of-pocket travel expenses that are pre-approved by Client. Client will also reimburse FAI for all costs (including reasonable attorney fees) associated with collecting any amounts due under this MSA.
- d. Service Credit. In the event that access to the FAI Products was unavailable during the applicable Subscription Term due to acts or omissions by FAI in a prior month, Client will be granted a credit, as outlined in the SLA, that can be applied towards all or part of the Fees.

5. Technical Support, Maintenance, and Training. FAI shall provide Client with the Technical Support, Maintenance, and Training described in the applicable Order Form, if any.

6. Third Party Contractors. FAI may, in its sole discretion, and at its expense, retain qualified third parties and service providers, including related entities, located within or outside of the United States, to furnish services to it in connection with the FAI Products ("**Third-Party Contractors**"), provided that FAI will be responsible to Client for any breach of this MSA by such Third-Party Contractors as if such breach were made directly by FAI. FAI may share Confidential Information with Third-Party Contractors on the same basis as FAI would be permitted to share information with FAI employees; provided, however, that FAI shall require each such Third-Party Contractor to enter a confidentiality agreement and, if applicable, Business Associate Subcontractor agreement, with FAI that is as protective of confidential information as this MSA.

7. Exclusive Remedies.

- a. Right to Rectify / Modify or Obtain License. If the FAI Products, exclusive of any modifications or alterations not created or implemented by FAI, is held or is believed by FAI more likely than not to infringe a copyright or patent or other intellectual property right, FAI shall have the option, at its expense, to (i) modify the FAI Products to be non-infringing; or (ii) obtain for Client the right to continue using the FAI

Products. If it is not commercially reasonable to perform either of the above options, then FAI may terminate this MSA and refund payments made in advance for the unused Fees paid for the infringing FAI Products without any additional liability to Client.

- b. Equitable Relief. Client acknowledges and agrees that unauthorized use or transfer of the FAI Products or Proprietary Information may substantially diminish the value of such materials and irrevocably harm FAI; therefore, if Client breaches the provisions of this MSA, FAI shall be entitled to seek equitable relief, including injunctive relief, in addition to other remedies afforded by law, to prevent a breach of this MSA.

8. Indemnification

- a. Indemnification by Client. Client agrees to defend, indemnify and hold FAI, its Affiliates, and its and their personnel and officers (collectively, the “**FAI Indemnified Parties**”) harmless from and against any and all third-party Claims and any liabilities, damages, or expenses resulting therefrom, including court and administrative costs and attorney fees, arising out of (i) any and all infringement claims by the third parties challenging the infringement of their intellectual property rights to the extent based on the exclusions set forth in Section 8(d); (ii) any and all claims alleging that the Client Data or use of the Client Data in accordance with this MSA infringes upon or violates any third party’s intellectual property right; (iii) Client’s breach of its warranty in Section 3(b)(ii); or (vi) any and all claims arising out of an act or omission attributable to Client or Client’s officers, agents, employees, or contractors that constitutes gross negligence or willful misconduct.
- b. Indemnification Procedures. In the event of any claim arising under this Section, the indemnified party shall (i) promptly give written notice of the claim to indemnifying party (provided, that failure to provide such prompt written notice shall not relieve indemnifying party of its indemnification obligations under this Section unless indemnifying party is materially prejudiced by such failure); (ii) give indemnifying party sole control of the defense and settlement of the claim, except that (A) indemnified party may participate at indemnified party’s own expense and (B) indemnifying party may not settle any claims unless it unconditionally releases indemnified party of all liability; and (iii) provide necessary information and reasonable assistance in connection with the claim, at indemnifying party’s request and expense.
- c. Exclusions. FAI’s obligations under this section will be relieved to the extent the claim of infringement is based on or arises from by: (i) (A) Client’s modification of the Services or Software or (B) the use of the FAI Products in breach of this Agreement, but for which modification or use such claim of infringement would not have occurred; (ii) Client’s use of a superseded or altered release of the FAI Products if the infringement would have been avoided by Client’s use of a current unaltered release of the FAI Products which FAI provided to Client or Client’s failure to promptly use equivalent corrections or enhancements to any allegedly infringing Services or Software made available at no additional cost and notified in writing to indemnified party by FAI; or (iii) Client’s use of the Services and Software in combination with any third party content, product, or information (but for which combination such claim of infringement would not have occurred). THIS SECTION SETS FORTH FAI’S SOLE LIABILITY AND CLIENT’S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM COVERED BY INDEMNIFICATION UNDER THIS AGREEMENT.

9. Term and Termination.

- a. Term. This MSA shall commence on the Effective Date of the applicable Order Form and continue for the applicable Subscription Term, unless otherwise sooner terminated in accordance with the terms and conditions hereof.
- b. Termination for Breach. Either party hereto may terminate this MSA in the event of a material breach of this MSA by the other party that is not cured within thirty (30) days of written notice thereof from the non-breaching party. In the event of a breach that is not capable of cure within thirty (30) days, the cure period will be extended for a reasonable period necessary to cure the breach provided the party in breach diligently pursues the cure.
- c. Effect of Termination. Upon termination of this MSA, the provisions of this Section 9(c) will take immediate effect: (i) All rights, licenses and privileges granted under this MSA to Client will immediately terminate; (ii) Client shall promptly pay to FAI all undisputed amounts due and owing, and no termination of this MSA shall release Client from any obligation to pay any amount that has accrued or will accrue or become payable prior to or on the date of termination; and (iii) in the event the FAI Software or FAI Products is hosted in Client’s technical environment, Client will securely delete the FAI Software and/or Products and return or destroy all Documentation. Termination of this MSA or any license shall not limit either party from pursuing other remedies available to it, including injunctive relief. The provisions of this MSA relating to intellectual property, confidentiality, indemnification, limitation of liability, and remedies shall survive even after

termination of this MSA.

10. Limitation of Liability. IN NO EVENT SHALL FAI BE LIABLE FOR: INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST BUSINESS; LOST PROFITS; LOSS OF AVAILABILITY OR DAMAGE TO, LOSS, OR CORRUPTION OF DATA; INTEREST, THIRD PARTY CLAIMS BY AFFILIATES, PARTNERS OR CUSTOMERS OF THE OTHER PARTY; OR DAMAGES WITH RESPECT TO WHICH THE PARTY SEEKING DAMAGES CONTRIBUTED OR ACTED AS A CONTRIBUTING OR INTERVENING CAUSE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL FAI'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS MSA UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNT PAID TO FAI UNDER THIS MSA IN THE SIX (6) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

11. Additional Disclaimers. IN ADDITION, CLIENT ASSUMES SOLE RESPONSIBILITY FOR CONCLUSIONS DRAWN FROM THE USE OF THE FAI PRODUCTS. FAI WILL NOT BE LIABLE TO CLIENT (A) FOR ANY DAMAGE CAUSED BY ERRORS OR OMISSIONS IN ANY INFORMATION, DATA OR INSTRUCTIONS PROVIDED TO FAI BY CLIENT IN CONNECTION WITH THE FAI PRODUCTS OR SERVICES OR ANY ACTIONS TAKEN BY FAI AT CLIENT'S DIRECTION; (B) FOR ANY THIRD-PARTY PRODUCTS OR SERVICES ACCESSED AND/OR USED BY CLIENT THROUGH THE SERVICES; (C) WHERE ANY FAILURE TO PROVIDE THE FAI PRODUCTS OR SERVICES IS CAUSED BY A NETWORK, HARDWARE OR SOFTWARE FAULT IN EQUIPMENT WHICH IS NOT UNDER THE CONTROL OF FAI; (D) FOR ANY ACT OR OMISSION OF CLIENT CONTRARY TO FAI'S INSTRUCTIONS; (E) FOR USE OF THE FAI PRODUCTS OR SERVICES IN BREACH OF THE AGREEMENT; (F) FOR ANY UNAUTHORISED ACCESS TO THE FAI PRODUCTS OR SERVICES INCLUDING A MALICIOUS SECURITY BREACH EXCEPT TO THE EXTENT DUE TO A BREACH BY FAI OF ITS OBLIGATIONS HEREUNDER; AND (G) FOR LOSS OR DAMAGE CAUSED BY CLIENT'S DELAY OR FAILURE TO TIMELY PROVIDE ANY REQUIRED INFORMATION OR CO-OPERATION OR TO FULFILL ITS OBLIGATIONS UNDER THE AGREEMENT.

12. Press Releases and Use of Trademarks. Each party will be permitted to use the other's name and logo on each other's web site, press releases, and marketing materials. Any further disclosure by either party will be subject to the other party's prior written approval of both the content and the type of release. Nothing in this MSA will be construed as obligating either party to participate in press releases with the other party.

13. Confidentiality.

- a. Confidential Information. The parties to this MSA undertake to retain in confidence all information disclosed to the other party in relation to this MSA that the disclosing party has designated as being confidential in writing or if disclosed orally, confirmed in writing as having been disclosed as confidential or proprietary within a reasonable time (not to exceed thirty (30) days) after the oral disclosure, or which information would, under the circumstances, whether disclosed orally or in writing, appear to a reasonable person to be confidential or proprietary ("**Confidential Information**"). The terms and conditions of any Order Form entered into under this MSA, the FAI Products and all Documentation are deemed Confidential Information of FAI. "Confidential Information" will not include information that: (i) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the receiving party; (ii) the receiving party can demonstrate to have had rightfully in its possession and without restriction, prior to disclosure hereunder; (iii) is independently developed by the receiving party without use of the disclosing party's Confidential Information, as can be shown by the written records of the receiving party; (iv) is data used independently of any individually identifiable personal information; (v) is lawfully obtained from a third party without breach of the third party's confidentiality obligations; or (vi) is released for publication or disclosure by the disclosing party in writing.
- b. Use of Confidential Information. Each party agrees that it will not use any Confidential Information of the other party for any purpose other than, and then solely to the extent necessary, for the performance of its obligations or exercise of its rights under this MSA. Each party agrees that it will not disclose any of the other party's Confidential Information to (i) any third parties or (ii) its own employees, except for those employees and third parties who are required to have the information in connection with the performance by the receiving party of its obligations under this MSA, who have been informed of the confidentiality obligations contained herein, and who are bound by a written agreement containing confidentiality obligations at least as restrictive as those contained in this MSA. Each party will be responsible for any breach of this Section 13 by its respective employees and other permitted recipients hereunder. Each party shall treat/maintain the other party's material disclosed to it hereunder with the same diligence and care as it would its own Confidential Information of a similar nature, and in any case with no less than reasonable care. To the extent applicable, each party shall reproduce the other party's proprietary rights notices on any copies of the other party's Confidential Information, in the same manner in which such notices were set forth in or on the original.
- c. Compelled Disclosure of Confidential Information. In the event that a receiving party or any of its representatives or customers is requested or required (by oral questions, interrogatories, requests for

information or documents, subpoena, civil investigative demand, or similar process of law) to disclose any of the Confidential Information of the disclosing party, it is agreed that the receiving party, to the extent permissible by law, will provide the disclosing party with prompt written notice of such request(s) so that disclosing party may seek an appropriate protective order or other appropriate remedy at its own expense and/or waive the receiving party's or its representative's compliance with the provisions of this Section 13. In the event that such protective order or other remedy is not obtained, or that the disclosing party grants a waiver hereunder, the receiving party or its customer may furnish that portion (and only that portion) of the Confidential Information which it is legally compelled to disclose, and, if requested by disclosing party, will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished at disclosing party's expense.

- d. Ownership of Confidential Information. All rights, title and ownership of the disclosing party's Confidential Information shall remain at all times with the disclosing party.
- e. Equitable Relief. Both parties agree that the receiving party's obligations to protect and maintain the confidentiality of the disclosing party have a special value, and damages alone in an action at law cannot compensate the disclosing party reasonably or adequately in the event that the receiving party breaches or threatens to breach those obligations. Both parties, therefore, expressly agree that the disclosing party is entitled to seek injunctive and other equitable relief in the event of such breach or threatened breach. This relief is in addition to any other rights or remedies that the disclosing party may possess.

14. General Terms.

- a. Assignment. This MSA will bind and inure to the benefit of each party's permitted successors and assigns. Client may not assign this MSA except upon the advance written consent of the FAI. FAI may assign its rights and obligations under this Agreement, in whole or in part, to any third party at its sole discretion. . Any attempt to transfer or assign this MSA except as expressly authorized under this Section 14(a) will be null and void.
- b. Independent Contractors. The parties to this MSA are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.
- c. Governing Law and Arbitration. This MSA and all other documents executed in connection with this MSA shall be governed by and construed in accordance with California law, without regard to conflicts of law principles. In the event of any dispute arising out of or relating to this MSA, the dispute shall be first referred to arbitration in accordance with the rules of the American Arbitration Association. The location of the arbitration shall be in Los Angeles, California. FAI and Client, before entering arbitration, shall each appoint an arbitrator and these two shall select a third arbitrator to be a member of the panel. If the two are not able to agree then the American Arbitration Association shall make the appointment of a person that is neutral to the controversy. None of the arbitrators shall be officer or employees or Affiliates of the parties. Such arbitrators shall, to the extent reasonably practicable, be recognized experts in the computer software field. The cost of the arbitration shall be borne equally by the parties and each party shall bear its own attorney fees and costs. The award of the arbitration panel shall be binding and may be entered as a judgment in any court of competent jurisdiction. The venue for any cause of action, claim or proceeding arising out of or related to this MSA and License and other such documents shall be in a court of competent jurisdiction in the State of California.
- d. Notices. Any notice required under this MSA will be considered to be given or transmitted (i) on the fifth (5th) business day following the date upon which it was sent by certified mail, postage prepaid, addressed to the party for whom it is intended at its address of record; (ii) by courier or messenger service, which notice will be effective on receipt by recipient as indicated on the carrier's receipt; or (iii) by email to the email address of record. The addresses of record are indicated below the signature block for each party. A party may change its address for purposes of this Section by giving written notice in the manner set forth above.
- e. Severability. If any provision of this MSA is held to be invalid or unenforceable, it shall be considered separable and inapplicable and will not affect any other provision or provisions of this MSA, unless an essential purpose of this MSA would be defeated by the loss of the illegal, unenforceable, or invalid provision.
- f. Amendments; Waivers. FAI reserves the right to modify the terms and conditions of this Agreement and its policies relating to the Services at any time, in its sole discretion, by providing notice to Client in advance of the effective date of such changes ("**Amendment Date**"). Continuing to use the Service after the Amendment Date

constitutes acceptance of the revised terms and conditions of the Agreement. The Agreement may not be modified or amended by Client except in a writing signed by a duly authorized representative of FAI. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by this MSA will be effective unless it is in writing and signed by the waiving party. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless the writing so specifies.

- g. Interpretation. For purposes of this MSA, (i) the words “include,” “includes,” and “including” are deemed to be followed by the words “without limitation;” (ii) the word “or” is not exclusive; and (iii) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this MSA as a whole. Unless the context otherwise requires, references herein: (i) to sections, schedules, and exhibits mean the sections of, and schedules and exhibits attached to, this MSA; (ii) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This MSA shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The schedules and exhibits referred to herein shall be construed with, and as an integral part of, this MSA to the same extent as if they were set forth verbatim herein.
- h. No Third-Party Rights. There are no third-party beneficiaries to this MSA. The rights and remedies available to Client under this MSA are non-transferable (except as expressly set forth in Section 16(a)) and cannot be availed by any third party, which is not a party to this MSA.
- i. Export Compliance. Each party shall comply with all applicable export and re-export control and trade and economic sanctions laws, including the Export Administration Regulations maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC), and the International Traffic in Arms Regulations maintained by the U.S. State Department. Neither party, nor any of its subsidiaries or any person acting on its behalf or owning fifty percent (50%) or more of its equity securities or other equivalent voting interests, is (i) a person on the List of Specially Designated Nationals and Blocked Persons or any other list of sanctioned persons administered by OFAC or any other governmental entity, or (ii) a national or resident of, or a segment of the government of, any country or territory for which the United States has embargoed goods or imposed trade sanctions.
- j. Force Majeure. Except for payment obligations, neither party shall be in default or otherwise liable for any delay in or failure of its performance under this MSA if such delay or failure arises by any reasons beyond its reasonable control, including any act of God, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, failures or delay in transportation or communications or utilities, or any act or failure to act by the other party or such other party’s officers, employees, agents or contractors; provided, however, that lack of funds shall not be deemed to be a reason beyond a party’s reasonable control.
- k. Entire Agreement. This MSA (including the Exhibits hereto and related Order Forms) constitutes the complete agreement between the parties with regard to the subject matter hereof. It is expressly agreed that the terms of this MSA supersede all prior or contemporaneous agreements, representations or understandings, written or oral, concerning the subject matter of this MSA. This MSA may not be modified or amended except in a writing signed by a duly authorized representative of each party. No other act, document, usage or custom shall be deemed to amend or modify this MSA. Any document, including an Order Form or other statement of work, which is signed by authorized representatives of the parties and that includes specific reference to this MSA shall be considered a supplement to this MSA. No party has been induced to enter into this MSA by, nor is any party relying on, any representation or warranty outside those expressly set forth in this MSA.

**EXHIBIT A
SERVICE LEVEL AGREEMENT**

Access to the System Availability (the “ Availability Requirement ”)	Calculation Formula for Actual Availability (the “ Percentage Uptime ”)	Service Availability Credits
The FAI Products will be available for Client to access at least 99.0% of the time during any Operational Hours.	$(\text{Uptime during Operational Hours for a month} + \text{Excused Downtime during Operational Hours for such month}) / \text{total amount of Operational Hours for such month} * 100$	Client will be entitled to a Service Availability Credit of 5% of Fees paid in any month for each 2% by which Percentage Uptime is less than the Availability Requirement for that month.
The FAI Products will be available for Client to access at least 90% of the time during any period of time that is not Operational Hours (“ Non-Operational Hours ”).	$(\text{Uptime during Non-Operational Hours for a month} + \text{Excused Downtime during Non-Operational Hours for such month}) / \text{total amount of Non-Operational Hours for such month} * 100$	Client will be entitled to a Service Availability Credit of 5% of Fees paid in any month for each 3% by which Percentage Uptime is less than the Availability Requirement for that month.

“**Business Day**” means any Monday, Tuesday, Wednesday, Thursday, or Friday, unless such day is a U.S. federal holiday.

“**Operational Hours**” means ten (10) hours per Business Day, starting at eight (8) a.m., Central Standard Time, and ending at six (6) p.m., Central Standard Time.

“**Excused Downtime**” means an amount of time the FAI Product is unavailable to Client when such unavailability: (a) is caused by a Force Majeure event (including downtime from FAI’s host provider, except to the extent that such downtime could have been reasonably mitigated by FAI); (b) is caused by Client, with no fault of FAI; or (c) is part of a regularly scheduled downtime that does not commence until at least two hours after any Operational Hours.

“**Uptime**” means the amount of time the FAI Product is available to Client.