

MASTER SERVICES SUBSCRIPTION AGREEMENT

Parties: <i>Full Legal Name:</i> <i>Business Entity Type:</i> <i>Organized In:</i> <i>Address:</i>	"COMPANY" COMPANY Inc. Corporation STATE ADDRESS Attn: _____ Phone: _____ Email address: _____	"Client" or "Ordering Activity" << INSERT FULL CLIENT NAME >> Attn: _____ Phone: _____ Email address: _____
Agreement Effective Date: _____		

This Master Services Subscription Agreement (the "Agreement") sets forth the terms and conditions governing COMPANY' provision to Client of a cloud-based asset management and decision support system.

This Agreement, including the Order Form attached to it, as well as any Order Forms and Statements of Work entered into by the parties from time to time, the underlying AGENCY Schedule Contract, and Schedule Pricelist, together constitute the entire agreement of the parties and supersede any prior and contemporaneous oral or written understanding as to the parties' relationship and the subject matter hereof. In the event of any conflict or contradiction among the foregoing documents, the documents will control in the order listed in Contract Clause 552.212-4(s). This Agreement may only be amended in a writing signed by both parties.

This Agreement may be executed in two or more counterparts, each of which will be deemed an original for all purposes, and together will constitute one and the same document. Once signed, both parties agree that any reproduction of this Agreement made by reliable means (for example, a photocopy, facsimile, or PDF file) is an original.

AGREED TO AND ACCEPTED:

"COMPANY"
COMPANY Inc.

Authorized Signature

Print Name

Title

Date

AGREED TO AND ACCEPTED:

"Client"
<< INSERT FULL CLIENT NAME >>

Authorized Signature

Print Name

Title

Date

1. Definitions.

- a. **"Client Data"** refers to the data Client or any User uploads or otherwise supplies to, or stores in, the Services under Client's account.
- b. **"Documentation"** means the user guides, help information, and other technical and operations manuals and specifications for the Services made available by COMPANY in electronic or other form, as updated from time to time.
- c. **"Order Form"** refers to the document which specifies, among other things, the Services to be provided to Client by COMPANY as well as the scope of use, order effective date and term, Subscription Fees and other prices, billing period, and other applicable details. The initial Order Form entered into by the parties is attached to this Agreement. To be effective, additional Order Forms must be signed by both parties. All Order Forms are subject to this Agreement.
- d. **"Services"** refers to the online integrated asset management and decision support system offerings, and any other product or service provided to Client by COMPANY as specified on the applicable Order Form.
- e. **"Subscription Fees"** mean the fees paid by Client in accordance with the AGENCY Pricelist for the right to access and use the Services during the applicable Service Term.
- f. **"User"** refers to each employee, agent, contractor, and consultant who is authorized by Client to use the Services, and has been supplied a user identification and password by Client (or by COMPANY at Client's request).

2. Provision of the Services.

- a. **Availability and Use of the Services.** COMPANY will make the Services available to Client in accordance with each Order Form entered into by the parties. Client's use of the Services is limited to its internal business purposes solely for the scope and use limitations specified in the applicable Order Form.
- b. **Changes to the Services.** COMPANY may make changes, modifications and enhancements to the Services from time to time. Any material change, modification, or enhancement of the service agreed to in the Order Form and this Agreement shall be presented to Client for review and will not be effective unless and until both parties sign a written agreement updating these terms.
- c. **Support for the Services.** COMPANY will provide Client with the support described in COMPANY's then current technical support policy, a current copy of which is attached as Exhibit A.
- d. **Business Continuity and Security Measures for the Services.**
 - i. **Data Backup.** The Services include standard off-site backup and recovery capabilities including daily incremental backups with synthetic full backups created weekly and monthly. Weekly and monthly full backups are stored off-site on disk or via a cloud data storage service. With respect to long term retention, COMPANY follows industry standard best practices in having 24 monthly and seven yearly backups. Upon request, COMPANY will offer additional long term monthly and yearly data retention options tailored to address unique Client requirements.
 - ii. **Data Restoration.** In the event of a loss of Client Data due to a disaster, the Data is restored using the most recent backup so that the Services are available within twelve hours of the incident. In the event of a server (host) loss, an already "imaged" stand-by server will be provisioned in place of the failed server in the "state-less" application server farm. This standby server can be in production within four hours.
 - iii. **Business Continuity.** COMPANY's business continuity plans adhere to industry best practices. COMPANY will invoke those plans in the event there is a clearly adverse impact to the Services. COMPANY will review its business continuity plan for disaster recovery on an annual basis at Client's request including any changes that have been made to the plan since the prior review. COMPANY will also ensure that any changes to its business continuity plans are communicated to Client in the event of any material change to the plan.
 - iv. **Security Measures.** In providing the Services, COMPANY complies with its information security procedures. A current copy of these procedures is attached as Exhibit B. COMPANY will provide Client on an annual basis with SSAE16 Reviews from the third-party data center providers utilized in the provision of the Services to Client. Client acknowledges and agrees that all SSAE16 Reviews constitute Confidential Information of COMPANY. COMPANY recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.
- 3. **Order Process.** Client will order Services by signing an Order Form. In the event that Client's business practices require a purchase order number be issued prior to payment of any COMPANY invoices issued pursuant to an Order Form, Client will promptly provide that number to COMPANY. Except as set forth in the Order Form, terms, provisions or conditions on any purchase order, acknowledgement, or other business form or writing that Client may provide to COMPANY or use in connection with the procurement of Services (or any software) from COMPANY will have no effect on the rights, duties or obligations of the parties under this Agreement, regardless of any failure of COMPANY to object to such terms, provisions or conditions.
- 4. **Professional Services.** If professional services (such as implementation, training, consulting, etc.) are included in any Order Form ("Professional Services"), then they will be set forth in a separately executed Statement of Work ("Statement of Work") containing relevant project details including, if applicable, any works to be developed by COMPANY and provided to Client ("Deliverables"). In addition, the following provisions will apply to all Statements of Work: (a) COMPANY will retain all ownership rights to any and all Deliverables excluding, any pre-existing technology, materials or Client Confidential Information supplied by Client for incorporation into such Deliverable; and (b) COMPANY grants Client a royalty-free, non-exclusive, non-transferable, non-assignable worldwide license to use any

Deliverable to the extent necessary to permit Client to use the Deliverable in connection with the Services during the Service Term. All Professional Services are provided only as an adjunct to the Services, and are separate and apart from the Services.

5. Client Responsibilities Relating to Use of the Services.

a. Access to the Services. Client is responsible for (i) all activities conducted under its User accounts, (ii) complying with all applicable laws and regulations in connection with Client's use of the Services, and (iii) obtaining and maintaining any hardware, software and network infrastructure ("Client Equipment") and any ancillary services needed to connect to, access or otherwise use the Services, and ensuring that the Client Equipment and ancillary services comply with the configuration requirements specified by COMPANY and agreed upon with Client. Client agrees to notify COMPANY immediately of any unauthorized use of any password or account or any other known or suspected breach of security with respect to the Services.

b. Use of the Services. Client agrees to use the Services solely for its internal business purposes in accordance with applicable laws. Client will not: (i) resell, sublicense, or lease the Services or make the Services available to third parties for or through any time-share arrangement, (ii) make the Services available to any third party except as required by Users, (iii) send or store infringing or unlawful material, (iv) attempt to gain unauthorized access to the Services or its related systems or networks, (v) interfere with or disrupt the integrity or performance of the Services or the data contained therein, (vi) modify, copy or create derivative works based on the Services, (vii) reverse engineer the Services, or (viii) access the Services for the purpose of building a competitive product or service or copying its features or user interface.

6. Fees and Payment Terms.

a. Fees. Client agrees to pay all Subscription Fees and other charges as specified in accordance with the AGENCY Pricelist on each executed Order Form and Statement of Work.

b. Additional Payment Obligations. All payments will be made in U.S. dollars. Fees are due within 30 days from receipt of COMPANY's invoice (or as otherwise set forth in the invoice) unless subject to a reasonable and good faith dispute.

c. Taxes. Notwithstanding the provisions of FAR 52.229-3, Federal, State and Local Taxes, January 1991, the AGENCY Pricelist excludes all State and Local taxes levied on or measured by this Agreement or sales price of the Services furnished under this Agreement. Taxes excluded from the Agreement price pursuant to the preceding sentence shall be separately stated on COMPANY's invoices and Client

agrees either to pay to COMPANY amounts covering such taxes or to provide evidence (i.e., tax exemption certificate) necessary to sustain an exemption therefrom.

d. Scope of Use of the Services. Client is responsible for monitoring its use of the Services. If Client's use of the Services is found to be greater than that for which Client contracted, COMPANY will invoice Client for additional fees for the period of such additional use, and Client will pay fees owed in accordance with this Agreement.

7. Intellectual Property Ownership Rights. As between Client and COMPANY, Client owns all right, title, and interest in the Client Data, including all intellectual rights in the Client Data. Client grants COMPANY the nonexclusive, paid-up right to use the Client Data to provide the Services to Client. COMPANY (and its licensors, where applicable) owns all right, title, and interest, including all intellectual rights, in and to the Services, including to any and all enhancements, modifications, and extensions to the Services. This Agreement is not a sale and does not convey to Client any rights of ownership in or related to the Services. Except for the limited rights and licenses expressly granted in this Agreement, no other license is granted and no other use is permitted.

8. Limited Warranty; Warranty Disclaimer.

a. Mutual Warranties. Each party represents and warrants that (i) it has the legal power to enter into and perform under this Agreement, and (ii) it will comply with all other applicable laws in performance of its obligations and use of the Services hereunder.

b. By COMPANY.

i. General. COMPANY warrants that:

A. the Services will provide the functionality described in the applicable Documentation under normal use and circumstances. In the event the Services are nonconforming, COMPANY will fix, provide a work around, or otherwise repair or replace the nonconforming Services, or, if COMPANY is unable to do so, terminate Client's access to the Services and return the Contract Price paid for the Services previously paid to COMPANY for the period beginning with Client's notice of nonconformity through the remainder of the Initial Service Term or Extension Service Term, as applicable, and

B. it routinely tests the Services using up-to-date anti-virus software in efforts to detect and, if so detected, to eliminate, any disabling devices, viruses, Trojan, horses, trap doors, back doors, Easter eggs, time bombs, cancelbots, or other computer programming routines designed to damage, detrimentally interfere with, surreptitiously intercept or expropriate any other software or data ("Malicious Code"). If Malicious Code is introduced into Client's computer systems by the Services, COMPANY will, at its own expense, assist and work with Client, at Client's direction, to remediate the damage caused by the Malicious Code, provided that Client: (I) has taken all prudent business measures to prevent introduction of any such Malicious Code into its computer systems, (II) takes all prudent business measures to minimize the effects of any such Malicious Code, and (III) delivers sufficient documentation to COMPANY to validate Client's belief that such Malicious Code was introduced into Client's computer system by the Services.

ii. **No Infringement.** COMPANY warrants that use of the Services as permitted under this Agreement does not infringe on the intellectual property rights of any third party. In the event of any breach of this warranty, COMPANY will indemnify Client as specified in Section 10 ("Indemnification").

iii. **Service Level Warranty.** COMPANY warrants that the Services will meet the commitments set forth in the Service Level Agreement (the "SLA"), a copy of which is attached as Exhibit C. In the event of any failure to meet this warranty, COMPANY will provide the refund remedies set forth in the SLA.

c. Disclaimer. THE PROVISIONS OF SECTION 8.b CONSTITUTE CLIENT'S SOLE AND EXCLUSIVE REMEDY, AND COMPANY' SOLE AND EXCLUSIVE LIABILITY, FOR BREACH OF COMPANY' WARRANTIES UNDER THIS AGREEMENT. EXCEPT AS SET FORTH IN SECTION 8.b OF THIS AGREEMENT, SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. COMPANY AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY does not make any warranty that the Services will be uninterrupted, timely, secure, or error free. COMPANY does not and cannot control the flow of data to or from COMPANY' network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Client's connections to the Internet (or portions thereof). COMPANY agrees to use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events. However, COMPANY cannot guarantee that such events will not occur. Accordingly, COMPANY disclaims any and all liability resulting from or related to such events.

9. Confidentiality.

a. Confidential Information Defined. "Confidential Information" means all confidential and proprietary information of a party (as the disclosing party) disclosed to the other party (as the receiving party), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information specifically includes (i) in the case of Client, the Client Data, and (ii) in the case of COMPANY, the COMPANY Technology, and the Services.

b. Exclusions from Confidentiality. Confidential Information does not include any information that, without breach of any obligation owed to the disclosing party: (i) is or becomes generally known to the public, (ii) was known to the receiving party prior to its disclosure by the disclosing party, (iii) was independently developed by the receiving party without breach of this Agreement, or (iv) is received from a third party. If the receiving party is compelled by law to disclose Confidential Information of the disclosing party, it will provide the disclosing party with prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure.

c. Obligations regarding Confidential Information. Except as expressly permitted by this Agreement, COMPANY and Client will not, nor will they permit their respective employees, agents, attorneys or independent contractors to, disclose, use, copy, distribute, sell, license, publish, reproduce or otherwise make available Confidential Information of the other party. Licensor and the Government will each (i) secure and protect the other party's Confidential Information by using the same or greater level of care that it uses to protect its own confidential and proprietary information of like kind, but in no event less than a reasonable degree of care, and (ii) advise each of their respective employees, agents, attorneys and independent contractors who have access to such Confidential Information to hold it confidential. Notwithstanding the foregoing, either party may disclose the other party's Confidential Information to the extent required by applicable law or regulation, including without limitation any applicable Freedom of Information Act or sunshine law, or by order of a court or other governmental entity, in which case such party will so notify the other party as soon as practicable and if possible at least thirty (30) days prior to such party making such required disclosure.

d. No Injunctive Relief. No injunctive relief will be available against either party in connection with the Services or this Agreement. See 28 U.S.C. § 1498(b).

10. Indemnification.

a. By COMPANY.

i. **Indemnification Obligation.** COMPANY will defend Client from and against all claims, suits or actions arising out of or resulting from any action against Client that is based on any third party claim that use of the Services as authorized in this Agreement infringes that party's United States patents, copyrights, or trade secrets, and will pay the amount of any final judgment awarded (including reasonable attorney's fees and costs) or final settlement made with respect to such claim provided that COMPANY is notified promptly by the Client in writing of any such action. COMPANY shall coordinate its defense with the Department of Justice as requested by Client. In addition to COMPANY' obligation of indemnification, if the Services become or, in COMPANY' opinion, are likely to become the subject of a claim of infringement, COMPANY may, at its option, either procure for Client the right to continue using the Services or replace or modify the Services to make the Services non-infringing. If COMPANY, in its sole discretion, concludes that neither of these alternatives is reasonably available, COMPANY may terminate Client's right to use the Services and release Client from its obligation to make future payments for the Services or issue a pro rata refund for any fees paid in advance. The foregoing states the entire obligation and liability of COMPANY with respect to any infringement claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

ii. **Exceptions.** COMPANY' indemnification obligations will not apply to any claim resulting from the (i) use of the Services in combination with other products, services or devices if the claim would not have arisen but for such combination or in a manner not

authorized by this Agreement (or provided for in the Documentation), or (ii) use of the Services other than in accordance with this Agreement.

iii. **Obligation.** The provisions of this Section 10 set forth COMPANY' sole and exclusive obligations, and Client's sole and exclusive remedies, with respect to any third party claim.

b. **No Indemnification by Client.** Client will not have any indemnification or defense obligations to COMPANY or any third party in connection with the Services.

11. **Limitation of Liability.** Except with respect to a breach of each party's confidentiality obligations as set forth in Section 9 or of COMPANY' indemnification obligations under Section 10, and Client's obligation to pay amounts due under this Agreement, neither party will be liable for consequential, incidental, indirect, punitive or special damages, regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose or otherwise, and even if advised of the likelihood of such damages. In no event will either party's cumulative liability arising out of or related to this Agreement, regardless of the form of action that imposes liability, exceed, in the aggregate, (i) for Services, one year of Subscription Fees for the Services under the Order Form which are the subject of the claim, and (ii) for Professional Services, fees paid pursuant to the Statement of Work under the Order Form which was the subject of the claim. The foregoing limitation of liability shall not apply to (a) personal injury or death resulting from COMPANY' negligence; or (b) for any other matter for which liability cannot be excluded by law. The parties acknowledge that nothing in this provision shall restrict Client's statutory remedies in the event of fraud.

12. Term and Termination.

a. **Term.** This Agreement commences on the Effective Date specified on the first page of this Agreement and remains in effect until all Order Forms entered into by the parties have expired or been terminated. The initial term applicable to an Order Form means the period which begins on the Effective Date of the applicable Order Form and continues for the initial term specified in the Order Form (each, an "Initial Service Term"). Upon expiration of the Initial Service Term of an Order Form, the Order Form will automatically terminate unless it has been extended in a writing signed by both parties for a successive twelve month period (each of which is referred to as an "Extension Service Term" and, together with the Initial Service Term, is referred to as the "Service Term"). In the event that an Order Form contains Services added to an existing subscription, the added Services will be billed on a pro-rated basis and will be coterminous with the Initial Service Term or applicable Renewal Service Term of that Order Form, unless otherwise agreed to by the parties.

b. **No Automatic Renewals; No Anti-Deficiency Act Violations.** Client will not be under any automatic renewal obligations in connection with the Services or any other obligations that would violate the Anti-Deficiency Act (31 U.S.C. § 1341).

c. **Termination.** Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. COMPANY shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under this Agreement. Both parties will perform in accordance with such final resolution..

d. **Effect of Termination; Survival.** For a period of 30 days from the effective date of termination of this Agreement, COMPANY will make the Client Data available for download provided Client is not in breach of this Agreement and has paid all fees due under this Agreement in full. After that period, COMPANY will delete all backed-up Client Data from its systems and Client's access to the Services will cease. In addition, each party will return to the other the original and all copies of the Confidential Information in the other's possession, custody or control or, in lieu of returning such Confidential Information, destroy all copies of such Confidential Information, and certify to such destruction in a writing signed by its officer. Client's obligation to pay COMPANY amounts due hereunder will survive any expiration or termination of this Agreement. The terms of any other Sections that by their nature are intended to extend beyond termination will survive termination of this Agreement for any reason.

13. General.

a. **Governing Law and Venue.** This Agreement will be governed exclusively by U.S. Federal law and venue.

b. **Disputes.** Any dispute between COMPANY and Client in connection with this Agreement will be resolved in accordance with FAR 52.233-1 (Disputes (May 2014)), and/or any other dispute resolution provision contained in this Agreement.

c. **No Other Conflict with Federal Procurement Law.** If any other terms or conditions contained in this Agreement are in any way conflicting or inconsistent with Federal procurement law, or any applicable FAR provisions, then such terms or conditions are hereby deleted in their entirety from this Agreement.

d. **U.S. Government Restricted Rights.** The Services are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the Government is subject to restrictions as set forth in the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013(c)(1)(ii) or 52.227-14, as applicable. Manufacturer is COMPANY Inc., ADDRESS.

e. **Suggestions.** Client may from time to time provide suggestions, comments or other feedback ("Feedback") to COMPANY with respect to the Services. COMPANY is free to use the Feedback for any purpose, without obligation. COMPANY acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

f. **Independent Contractors.** The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to this Agreement.

g. Notices. All notices required to be given under this Agreement will be given in writing, and sent to the recipient party's address stated in this Agreement, unless otherwise changed in writing. All notices will be given by certified or registered mail, or overnight carrier. Such notices will be deemed given on the date of receipt of delivery of said notice.

h. No Waiver. No failure or delay in exercising any right hereunder will constitute a waiver of such right. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions will remain in effect.

i. Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

j. Assignment. Neither party may assign this Agreement or otherwise transfer any of its rights or obligations hereunder, in whole or in part, without the other party's prior written consent. Any other attempt to assign or delegate any of its rights or obligations under this Agreement without such consent will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's permitted successors and assign.

MASTER SERVICES SUBSCRIPTION AGREEMENT

Exhibit A

Support for the Services

COMPANY provides support for its hosted “software as a service” decision support system (the “Services”) as described below.

1. **Communication.** COMPANY uses a web based “self-service” Client Portal for use by Key Contacts. The Client Portal includes the following information:

- Case Management Database: Clients may create and view case history related to their past requests. Cases viewed in this manner will include all of a Client’s cases in the database.
- Solutions: Customers have the ability to search COMPANY’ public knowledge database for resolution of questions surrounding general end-user usage, system administration and configuration.

To submit an issue through the Client Portal, the Key Contact will log into the Client Portal User Center and complete the request form with all relevant information about the issue. Upon submission, COMPANY will generate a support request.

Other Means of Communication. COMPANY strongly encourages that issues be submitted via the Client Portal. While COMPANY will also generate support requests based on relevant information reported by the Key Contact over the phone or by email, note that support requests submitted by email are automatically classified as a Severity 4 Defect.

- By Self Service Request via the Client Portal: To submit an issue through the Client Portal, the Key Contact logs into the Client Portal User Center and completes the request form with all relevant information about the issue. Upon submission, COMPANY will generate a support request.
 - By Telephone: Once connected with an COMPANY representative, the Key Contact identifies to COMPANY the Client’s name, location, issue, and other data as requested so that COMPANY is able to generate a support request.
 - By Email: Upon receipt of an email request from the Key Contact, COMPANY will generate a support request.
2. **Designation of Key Contacts.** COMPANY will provide support to Client only by communication with the technical contacts designated by Client in the Client Portal (each, a “Key Contact”). Key Contacts may be changed at any time by updating the Customer account information in the Client Portal. Each Key Contact must have the relevant technical knowledge regarding the Services necessary to assist COMPANY as needed.
3. **Help Desk Support.** COMPANY’ customer support help desk provides assistance to the Designated Support Contacts on use and problem resolution issues with respect to the Services. The customer support help desk is available during the hours between 8:00 a.m. and 5:00 p.m. (Central time) on regular business days (excluding standard COMPANY holidays, a list of which will be provided by COMPANY to Customer upon request). COMPANY may change the hours during which the help desk is available but will not shorten the hours of support per day.
4. **Reporting and Resolving Issues with the Services.** Resolution of submitted issues with the Services will depend upon a complete understanding of the variables unique to each situation with both parties working together to identify and resolve the issue.
- a. Severity Levels and Issue Identification. Services issues are categorized by COMPANY into one of four classifications:
- i. “Severity 1” – Services is inoperable. Client is unable to use the Services without significant disruption to Customer’s primary business operations and with respect to which no workarounds exist that would enable the Services to be so used until corrections can be made.
 - ii. “Severity 2” – issue that is of a severity that prevents the Services from being used without significant disruption to Client’s primary business operations but with respect to which a workaround exists enabling business operations even if in a diminished capacity.
 - iii. “Severity 3” – issue which restricts the use of one or more features of the Services to perform necessary functions but with respect to which a workaround is available.
 - iv. “Severity 4” – are non-critical issue that prevent a function or component of the Services from operating properly but which is not a Severity 1, Severity 2 or Severity 3 issue.
- b. Problem Reporting. Client will promptly notify COMPANY regarding issues with the Services through the Client Portal, by telephone or by email as described above. When submitting any request for support, the Key Contact will follow the problem reporting procedures posted by COMPANY in the Client Portal. These procedures include identifying the Severity Level of the issue pursuant to the above classification scheme and providing a clear description of the issue.

At COMPANY' request, the Key Contact will provide additional data to facilitate COMPANY in reproducing the issue. Examples of data that may be requested include a description of the expected behavior and the frequency with which the issue occurs.

COMPANY will attempt to reproduce the issue and identify its cause. If COMPANY is able to reproduce the issue, COMPANY' response will include a confirmation of the Severity Level of the issue for the purpose of developing a resolution and any proposed work-around.

In the event COMPANY determines that the issue is, in fact, not an issue with the Services, but Customer disagrees with that determination, COMPANY and Client will work together to resolve the difference. This may include, but is not limited to, COMPANY' demonstrating to Customer why COMPANY does not believe that the issue is with the Services.

COMPANY and Client may revise the Severity classification of the issue based on additional information provided by Client or uncovered during the resolution process.

- c. **Issue Resolution.** COMPANY' response and resolution targets are set forth in the table on the following page. However, resolution times will vary depending on the exact issue and customer environment.

Severity Level of Issue ²	Target Time Frames ¹		
	Initial Response ³	Workaround or Temporary Fix	Final Resolution
1	30 minutes	Eight hours	Five days
2	30 minutes	Two days	Five days
3	30 minutes	Five days	Next general release
4	30 minutes	N/A ⁴	N/A ⁴

¹ Target time frames are measured from creation of a case number per the process described above. Since Defects may not be resolvable within a specific timeframe due to complexity of the solution and other factors, resolution targets are goals and not commitments. The use of the terms "hours" and "days" refer to "business hours" and "business days," are based on COMPANY' regular business schedule, and exclude weekends and COMPANY locally-observed holidays.

² Support requests submitted by email are automatically classified as a Severity 4 Defect.

³ When a customer submits a problem report through the Client Portal at clients.COMPANY.com, the acknowledgement will generally be under five minutes. When possible, a solution or a workaround will also be provided.

⁴ No guarantee of resolution.

COMPANY provides routine updates on resolution efforts.

Specifically, with respect to Severity 1 issues, COMPANY will use continuous and diligent efforts until Client is back in production. Otherwise, all Target Time Frames which fall outside of COMPANY' normal business hours will be carried over to the next business day.

COMPANY endeavors to investigate and correct issues at COMPANY' offices. If COMPANY is unable to do so, and provided the suspected issue is not attributable, in whole or in part, to any of the excluded causes specified below, then upon Client's request, COMPANY may travel to Client's location to investigate the issue with travel and other out-of-pocket expenses included as part of Maintenance Services. If, after COMPANY travels to the Client location, the suspected issue is determined to be unrelated to the Services, the problem resolution will be Client's responsibility and Client agrees to pay any travel expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable. Client shall only be liable for such travel expenses as approved as by Ordering Activity and funded under the applicable ordering document. COMPANY will have discretion as to the method and manner of maintenance and support efforts, including the use of non-COMPANY personnel.

d. **Escalation.**

- i. **Escalation Initiation.** Escalation may be initiated for a Severity 1 or Severity 2 issue from either COMPANY or Client via the escalation path provided by COMPANY.

- ii. **Escalation Criteria.** COMPANY' escalation criteria for a Severity 1 or Severity 2 issue are as follows:

- Severity 1 issue – If the issue has not resolved within one business day and provided no material progress has been made, the issue is escalated within COMPANY for additional action and resources as needed. Executive management monitors the issues closely until it is resolved.
- Severity 2 issue – escalated after three business days.

5. **Management of Updates to the Services.** COMPANY provides and manages all updates to maintain the Services at the latest version. COMPANY will notify Client prior to implementing an update that may materially affect the function or performance of the Services.

Support for the Services does *not* include any services to implement or test the update, to setup or configure the update relative to Client's instance or to migrate Client Data. Services are available on a time-and-materials basis to assist Client with these.

6. **Conditions and Limitations of Support.** COMPANY has no obligations to render support for the Services with respect to problems in the use or functioning of the Services caused by any hardware or software product other than the Services, by any error in the use of the Services inconsistent with its authorized use, or by any modifications of the Services by any person or entity other than one authorized by COMPANY. If support is rendered for any problem caused by any of the foregoing or for troubleshooting with respect to any of the foregoing, or if COMPANY' support services efforts are increased as a result, COMPANY reserves the right to impose charges at it then AGENCY Pricelist time and materials rates for all such services, including preapproved travel and per diem expenses to be reimbursed consistent with Client's travel policies. COMPANY' customer service engineer will notify a caller as soon as the billable status of the call is determined. The caller may terminate the call at that time without charge.

MASTER SERVICES SUBSCRIPTION AGREEMENT

Exhibit B

Information Security Procedures

COMPANY' information security program for its hosted "software as a service" decision support system (the "Services") is described below.

1. General Description of COMPANY' Information Security Program.

COMPANY' information security program is designed to:

- address the security, integrity and confidentiality of Client Data,
- protect against anticipated threats or hazards to the security or integrity of Client Data,
- protect against unauthorized access to or use of the Client Data that could result in substantial harm or inconvenience to the person that is the subject of the Client Data, and
- provide procedures for the proper disposal of Client Data.

2. General Procedures.

- a. Data Storage. COMPANY stores Client Data on secure computers located in a physically secure and controlled data center environment. COMPANY employs technologies that are consistent with industry standards for firewalls and other security technologies to prevent COMPANY computers from being accessed by unauthorized persons.
- b. Data Transfers. COMPANY uses HTTPS standards to protect data integrity during transfers. In addition, COMPANY will maintain the following security measures:
 - i. HTTP with SSL 128-bit encryption (HTTPS),
 - ii. the ability to transfer files via Secure File Transfer Protocol (SFTP),
 - iii. encryption of files with at least AES-128 or 3DES-128 for transmission in unencrypted email/FTP/HTTP channels, and
 - iv. encrypted passwords for the Services.
- c. Access and Use Monitoring. COMPANY will monitor COMPANY' user access to and use of the Services for security, performance evaluation, and system utilization purposes.

3. Security Assessments and Audits.

If requested by Client, COMPANY will cooperate with Client in an initial security assessment, including the completion of a risk assessment questionnaire. In addition, COMPANY will provide Client with SSAE16 Reviews from the third party data center providers utilized in the provision of the Services as well as with the results of the penetration testing which COMPANY has periodically performed by qualified third party security consultants.

4. Network and Physical Security Requirements.

- a. Basic Security Requirements. COMPANY will:
 - i. install and maintain a working, tuned network firewall to protect Client Data,
 - ii. regularly install security patches on the Services network,
 - iii. ensure that authentication to the Services' network web front-end is encrypted,
 - iv. where applicable, use and regularly update anti-malware prevention tools,
 - v. maintain a credential management process which includes assigning a unique ID to each person with computer access with a periodic password change requirement,
 - vi. track access to systems, generate and store audit trail and logs to help identify malicious activity,
 - vii. regularly test efficiency and health of security controls, systems and processes,
 - viii. maintain a policy that addresses information security for employees and representatives,
 - ix. restrict physical access to systems containing Client Data,
 - x. restrict remote access to the network / devices and employ secure remote access controls to verify the identity of users connecting, and
 - xi. protect on-site and off-site backups from unauthorized access during transit and storage.
 - b. Encryption. COMPANY will use cryptographic algorithms that have been published and evaluated by the general cryptographic community with sufficient strength to equate to 128-bit or better.
- #### **5. Security Breach.**
- a. Definition of Security Breach. "Security Breach" means the actual or suspected unauthorized acquisition, destruction, loss, misappropriation or access to, disclosure, use or modification of Client Data.

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- b. Notification of Security Breach. COMPANY will notify Client in accordance with applicable law of any actual or suspected security breach of any Client Data immediately following discovery of a Security Breach, and provide Client with a detailed description of the breach.
- c. Investigation of Security Breach. COMPANY will:
- ii. promptly investigate each Security Breach,
 - iii. take all reasonable steps necessary to limit, stop or otherwise remedy the Security Breach,
 - iv. promptly implement appropriate internal technical and procedural controls to reduce the likelihood of a recurrence of a Security Breach, and
 - v. provide Client with documentation detailing the controls implemented.

6. Return or Destruction of Data upon Termination.

COMPANY will maintain a documented process that provides for the security and return or destruction of all Client Data, including copies stored on backup media, in the event the Services are terminated. Notwithstanding the foregoing, with respect to copies of any of the Client Data retained by COMPANY in any backup tapes (or similar media) that are not easily accessible, COMPANY will continue to maintain the Data on such back-up tapes or other media subject to obligations of confidentiality under this Agreement. In addition, the Client Data will be destroyed or overwritten by COMPANY in the ordinary course of business for such records.

MASTER SERVICES SUBSCRIPTION AGREEMENT

Exhibit C

Service Level Agreement

COMPANY' service level agreement ("SLA") for its hosted "software as a service" decision support system (the "Services") is described below.

1. Definitions.

- a. **"Emergency Maintenance"** means downtime of the Services outside of the Scheduled Maintenance Window hours that is required to complete the application of urgent patches or fixes, or to undertake other urgent maintenance activities. If Emergency Maintenance is required, COMPANY will immediately contact Client and provide the expected start time of the Emergency Maintenance, its planned duration, and whether COMPANY expects the Services to be unavailable during the Emergency Maintenance.
- b. **"Monthly Subscription Fee"** means one-twelfth of the annual fee applicable to the Services.
- c. **"Scheduled Maintenance Window"** means the window during which scheduled maintenance of the Services may be performed. There is generally one Scheduled Maintenance Window monthly (currently, the first Friday in the month from 6 PM until 10 PM (Central time)). COMPANY will provide Client with a minimum of five business days advance notification of any Scheduled Maintenance Window. The notification will include the expected start time and duration of the Scheduled Maintenance Window activity. COMPANY will use commercially reasonable efforts to schedule any Scheduled Maintenance Window activity during off-business hours.
- d. **"Service Credit"** means the percentage of the Monthly Services Fee that is awarded to Client for a validated claim related to failure to meet the System Availability objective during that month.
- e. **"Service Level Agreement"** is specified in Section 3 ("System Availability Service Level Agreement") of this Exhibit B.
- f. **"System Availability"** means the percentage of total time during which the Services are available to Client, excluding the Scheduled Maintenance Window and Emergency Maintenance.

2. General Terms Applicable to the Service Level Agreement for the Services.

- a. **Service Credits.** Service Credits earned by Client hereunder will be applied against fees next due for the Services. If Service Credits cannot be applied to future fees due for the Services because the Agreement has expired or been terminated, COMPANY will promptly pay Client the amount of the credit, provided Client will not receive a refund if COMPANY has terminated the Agreement for Client's material uncured breach.
- b. **Service Level Agreement Claims.**
 - i. Client will have the remedies under this Service Level Agreement commencing 30 days after implementation and go-live of the Services.
 - ii. Client must notify COMPANY via email to support@COMPANY.com within five business days from the date of the incident Client first believes entitles it to receive a remedy under this Service Level Agreement set forth below.
 - iii. All claims for failure to meet the Service Level Agreement are subject to validation by COMPANY. To validate a claim, COMPANY will use log files, database records, audit logs, and any other available information as the basis for making a good faith judgment on the applicability of Service Credits to said incident. Upon Client's request, COMPANY will make information used to validate a claim available for auditing by Client.
 - iv. The remedies set forth herein represent Client's sole and exclusive remedy for COMPANY' breach of the Service Level Agreement defined in this Exhibit.
- c. **Exclusions.**
 - i. Client will not have any remedies under this Service Level Agreement in connection with any force majeure event.
 - ii. Client will not have any remedies under this Service Level Agreement to the extent a Service Credit claim is due to: (A) use of the Services outside the scope described in the Agreement, (B) Client's equipment and/or third party software, hardware or network infrastructure outside of COMPANY' data center and not under the direct control of COMPANY, (C) failure of Client to meet the configuration requirements for Client equipment specified by COMPANY, (D) failure of the external internet beyond COMPANY' network, (E) any inappropriate actions or inactions of Client or any other third party not under the direct control of COMPANY, or (F) attacks (i.e. hacks, denial of service attacks, malicious introduction of viruses and disabling devices) caused by third parties, provided COMPANY has taken all reasonable steps to prevent such attacks.

3. System Availability Service Level Agreement.

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- a. **System Availability.** COMPANY warrants at least 99% System Availability during each calendar month.
- b. **Remedy.** If the System Availability is less than 99%, and if Client has fulfilled all of its obligations under the Agreement including this Exhibit, COMPANY will provide Client with a Service Credit applied to the month in which the failure to meet this Service Level Agreement has occurred. The Service Credit will be calculated in accordance with the table below.

% of System Availability per Calendar Month	Service Credit
< 99%	2%
< 98%	4%
< 97%	6%