

## SHORT FORM MASTER SERVICES AGREEMENT

This SHORT FORM MASTER SERVICES AGREEMENT ("Agreement") is entered into on September 26, 2011, ("Effective Date"), by and between Teachers Insurance and Annuity Association of America ("TIAA"), a New York life insurance company, with a place of business at 730 Third Avenue, New York, New York 10017-3206, and Market On Demand, Inc. ("Supplier"), a Delaware corporation with a place of business at 5718 Central Avenue, Boulder, Colorado 80301.

### STATEMENT OF PURPOSE

TIAA and Supplier are entering into the Agreement for the purpose of having Supplier provide certain web design, development, and hosting Services, as further defined herein.

### AGREEMENT

In consideration of the mutual premises and covenants contained herein, and for other valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

The following Schedules are made a part of this Agreement and are hereby incorporated herein in the entirety.

SCHEDULE	SCHEDULE NAME
Schedule A	Statement of Work
Schedule B	Insurance Requirements
Schedule C	Service Level Agreement
Schedule D	Business Continuity/ Disaster Recovery
Schedule E	Information Security

#### 1. DEFINITIONS

All capitalized terms in this Agreement not defined in this Section shall have the meanings set forth in the Sections or Schedules to this Agreement in which such terms are defined.

1.1 "Affiliate" shall mean a business entity now or hereafter controlled by, controlling or under common control with a Party. Control exists when an entity owns or controls directly or indirectly 50% or more of the outstanding equity representing the right to vote for the election of directors or other managing authority of another entity. College Retirement Equities Fund ("CREF") shall be considered an Affiliate of TIAA whether or not such control otherwise exists.

1.2 "Agreement" shall mean the Short Form Master Services Agreement, including any Amendment, Statement of Work, Schedule, exhibit or similar attachment incorporated by reference into the Agreement.

1.3 "Amendment" shall mean a writing: (a) referencing the document that is intended to be amended; (b) stating that it amends such document; and (c) executed by both Parties; provided that an email, text message or similar electronic message or series of messages containing a typed name or signature block shall not constitute an Amendment.

1.4 "Business Days" shall mean Monday through Friday, excluding days on which TIAA is not open for business.

1.5 "Change Order" shall mean a document executed by the Parties that amends the scope or terms of the Services provided pursuant to the Agreement.

1.6 "Confidential Information" shall have the meaning set forth in Section 6.1.

1.7 "Damages" shall mean any and all losses, fines, expenses, damages, costs, liabilities and fees, including reasonable attorneys' fees and expenses incurred in investigation or defense of a claim.

1.8 "Party" or "Parties" shall mean either TIAA or Supplier.

1.9 "Schedule(s)" shall mean a Schedule attached to the Agreement.

1.10 "Section" shall mean a section or subsection of the Agreement.

1.11 "Services" shall mean the services that are more particularly described in a Schedule or Statement of Work to the Agreement, which may include, without limitation, all professional, labor and general services provided by Supplier.

1.12 "Subcontractor" shall mean a third party to whom Supplier or Supplier's subcontractor has delegated or subcontracted any portion of its obligations set forth herein.

1.13 "Supplier Personnel" shall mean all individuals who perform Services for TIAA on behalf of the Supplier including but not limited to, Subcontractors.

1.14 "Supplier Records" shall mean all records pertaining to products and Services provided to TIAA under this Agreement.

1.15 "Statement of Work" or "SOW" shall mean sequentially numbered documents which sets forth the description of Services and fees and expenses for such Services.

1.16 "Term" shall mean the initial term of the Agreement and any renewal or extension.

1.17 "Termination Event" shall have the meaning set forth in Section 5.3.

1.18 "TIAA Information Security Policy" shall mean TIAA's information systems security policy, as further defined in Schedule E of this Agreement.

1.19 "TIAA Representative" shall mean an employee, officer, director and/or agent of TIAA or its Affiliates.

1.20 "U.S." shall mean United States.

## 2. PERFORMANCE OF SERVICES

2.1 While this Agreement is in effect, and as requested by TIAA, Supplier shall provide the Services that are more particularly described in a Statement of Work. The engagement of a Subcontractor by Supplier shall not relieve Supplier of any of its obligations under this Agreement. Supplier shall be responsible for the performance and nonperformance of its Subcontractors as if such performance and nonperformance were that of the Supplier. All Services performed by Supplier and Supplier Personnel must be performed within the U.S. unless TIAA is notified in advance and has agreed in writing that Services may be performed outside of the U.S.

2.2 Supplier expressly acknowledges and agrees that the rights of TIAA set forth in this Agreement shall inure to all TIAA Affiliates and subsidiaries.

## 3. COMPETITIVE SERVICES RETAINED BY TIAA

TIAA may retain the services of other persons or entities to undertake the same or similar Services as those performed by Supplier hereunder.

## 4. INVOICES AND PAYMENT OF FEES/EXPENSES

4.1 Supplier has agreed to work at a rate(s) indicated in the applicable SOW. Unless otherwise agreed to by the Parties in writing, Supplier shall be responsible for any fees and expenses Supplier and Supplier Personnel may incur at any time and in any connection with performance of the Services.

4.2 TIAA shall pay all undisputed portions of a valid invoice within forty-five (45) days from TIAA's receipt of the invoice. TIAA reserves the right to require invoicing and payment through electronic transmission designated by TIAA at any time upon reasonable prior written notice.

4.3 TIAA shall pay Supplier all reasonable pre-approved, out-of-pocket expenses incurred solely in the performance of Services hereunder in accordance with the then-current version of the TIAA-CREF Travel Policy Supplement for Consultants and Independent Contractors. All fees and expenses shall be submitted for payment within sixty (60) days of the date the fees and expenses were first incurred. TIAA shall have no liability for payment of fees and expenses that are submitted to TIAA for payment more than sixty (60) days following the date such fees and expenses were first incurred.

4.4 TIAA will be responsible for any applicable sales, use, or other like taxes (hereinafter, "Tax" or "Taxes") attributable to periods on or after the Effective Date based upon or measured by Supplier's fees for performing or furnishing the Services. To the extent Supplier is required to collect such Taxes under applicable law, Supplier will separately state the amount of each such Tax due on its invoices to TIAA. If not all Services reported on an invoice are subject to Tax, the Supplier will also separately state the specific Services on which Tax may be due.

## 5. TERM AND TERMINATION

5.1 Agreement shall begin on the Effective Date and shall continue with full force and effect through December 31, 2013, unless terminated earlier as set forth herein. TIAA may, in its sole discretion and upon reasonable notice to Supplier, also elect to extend the term of the Agreement or any SOW hereunder on a month-to-month basis for up to twelve (12) additional months following the expiration of the then current term. Upon termination and/or expiration of this Agreement, TIAA's sole obligation shall be to pay Supplier for Services actually rendered and accepted under this Agreement as of the date of termination and/or expiration.

5.2 TIAA may terminate a Statement of Work without terminating the entire Agreement.

5.3 In addition to any other remedies available to either Party, upon the occurrence of a Termination Event with respect to either Party, the other Party may immediately terminate this Agreement or a Statement of Work under this Agreement by providing written notice of termination. A Termination Event shall be deemed to occur when (a) a Party materially breaches its obligations under this Agreement or a Statement of Work under this Agreement and the breach is not cured within thirty (30) calendar days after written notice of the breach and intent to terminate is provided by the terminating Party; (b) a Party becomes insolvent (generally unable to pay its debts as they become due) or the subject of a bankruptcy, conservatorship, receivership or similar proceeding, or makes a general assignment for the benefit of its creditors; or (c) gross negligence or willful misconduct by the other Party.

5.4 The rights and obligations of the Parties which by their nature must survive termination or expiration of the Agreement in order to achieve its fundamental purposes include, without limitation, the Sections of the Agreement: Sections 4.2 & 4.3, "Invoices and Payment of Fees/Expenses", Sections 5.3 & 5.4, "Term and Termination", Section 6, "Confidential Information", Section 9, "Indemnity/Limitation of Liability", Section 10, "Publicity and Use of Trademarks", Section 13, "Audit", Section 14, "Dispute Resolution" and Sections 15.1, 15.3 and 15.6 "General".

## 6. CONFIDENTIAL INFORMATION

6.1 Subject to Section 6.3 below, "Confidential Information" shall mean, without limitation:

(a) Any data or information disclosed in writing, orally, visually or in any other medium that is competitively sensitive material and not generally known to the public, including, but not limited to, information about product plans, marketing strategies, finance, operations, customer relationships, customer profiles, sales estimates, business plans, pricing information, and internal performance results relating to the activities of TIAA, any TIAA affiliates, Supplier, or their parent corporations, their respective subsidiaries and affiliated companies and the customers, clients, subcontractors, and suppliers of any of the foregoing.

(b) Any scientific, technical or business information, design, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords TIAA, TIAA Affiliates or Supplier a competitive advantage over its competitors.

(c) All confidential or proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, data, databases, inventions, know-how, show-how and trade secrets, whether or not patentable or copyrightable.

(d) All documents, inventions, substances, engineering and laboratory notebooks, drawings, diagrams, specifications, bills of material, equipment, prototypes and models, and any other tangible manifestation of the foregoing that now exist or come into the control or possession of the Receiving Party; and

(e) All copies thereof and all patent rights, copyrights, trade secrets, trademarks, service marks and other proprietary rights inherent therein and appurtenant thereto.

6.2 For purposes of this section, the "Disclosing Party" shall mean the Party or Party's employees, Subcontractors, agents and Affiliates that has given control or possession of Confidential Information to the Receiving Party, and the "Receiving Party" shall mean the Party or the Party's employees, Subcontractors, agents and Affiliates that has received Confidential Information from the Disclosing Party.

While performing the Services the Parties have or may be given access to Confidential Information of the other Party, its Affiliates, agents, Subcontractors and/or customers. Receiving Party agrees that it shall: (a) hold the Confidential Information in strict confidence; (b) not give, sell or disclose Confidential Information to any other third party who does not have an absolute necessity to access such Confidential Information in connection with the Services, unless such party is an auditor or other suppliers hired by the Receiving Party to perform internal audits and is bound by a Confidentiality Agreement; (c) advise each party who may be exposed to the Confidential Information under the terms of this Agreement that it is to be kept strictly confidential; and (d) ensure that neither Receiving Party, nor the parties to whom Receiving Party legally discloses the Confidential Information, will share or otherwise use the Confidential Information in violation of, or in any manner inconsistent with, applicable privacy laws.

Any copies or reproductions of the Confidential Information shall bear the patent, copyright, trademark or proprietary notices contained in the original. Upon Disclosing Party's request, but in any event upon termination of this Agreement, Receiving Party shall surrender to or dispose of the Disclosing Party's Confidential Information.

6.3 A party's Confidential Information shall not include information that:

- (a) is or becomes a part of the public domain through no act or omission of the non-disclosing Party;
- (b) is lawfully disclosed to Receiving Party by a third party without a known obligation of nondisclosure to the Disclosing Party;
- (c) is independently developed by the other Party without reference to the Confidential Information; or
- (d) is obligated to be disclosed by court order or government requirement, provided that Disclosing Party is given prompt written notice of such court order or government requirement, and an opportunity to obtain a protective order to prohibit or restrict such disclosure.

6.4 The obligations of confidentiality in this Agreement shall survive termination in perpetuity or for the longest time allowed under applicable law.

6.5 The Parties acknowledge that use or disclosure of any Confidential Information of the other Party in a manner inconsistent with this Agreement may give rise to irreparable injury to Disclosing Party or to third parties who have entrusted information to Disclosing Party, and such disclosure may be inadequately compensable in damages. Accordingly, in addition to any other legal remedies that may be available at law or in equity, Disclosing Party or third parties shall be entitled to seek equitable or injunctive relief against the unauthorized use or disclosure of Confidential Information.

6.6 The Parties acknowledge that it is not intended that Supplier have access to non public personal information regarding individual "consumers" or "customers" of TIAA as "consumers" or "customers" is defined in Section 509(4) of the Gramm Leach Bliley Act of 1999, and in the Fair Credit Reporting Act (FCRA) and the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). If such non public personal information is inadvertently disclosed to Supplier, Supplier agrees to immediately notify TIAA upon recognition that such information has been disclosed, keep such information strictly confidential and return or destroy the information at TIAA's direction.

## 7. WARRANTIES AND REPRESENTATIONS OF SUPPLIER

7.1 In rendering its obligations under this Agreement, without limiting other applicable performance warranties, Supplier warrants and represents to TIAA that:

(a) Supplier has the proper skill, training and background to perform the Services in a competent and professional manner in accordance with this Agreement.

(b) Supplier is in good standing in the state of its incorporation and is qualified to do business as a foreign corporation in each of the other states in which it is providing Services pursuant to this Agreement and any Statement of Work.

(c) Supplier shall perform the Services in compliance with all laws, regulations and other applicable legal requirements.

(d) Supplier Personnel are U.S. citizens or have valid U.S. immigration status, and Supplier is in full compliance with the requirements of the Immigration Reform and Control Act, including the requirements with regard to I-9 forms.

THE WARRANTIES CONTAINED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7.2 Supplier is held to certain performance level standards as set forth in Schedule C Service Level Agreement.

#### 8. INDEMNITY/LIMITATION OF LIABILITY

Supplier shall be liable for, and shall indemnify, defend and hold TIAA, TIAA Affiliates, TIAA Representatives, successors and permitted assigns harmless from and against any and all claims made or threatened by any third party and all related Damages arising from: (i) personal injury or death or damage to TIAA's personal or real property as well as its guests, customers, consumers, and other suppliers caused by Supplier; (ii) the gross negligence or willful misconduct of Supplier; and (iii) any proven claim of copyright infringement by a third party data provider.

EXCEPT FOR CLAIMS ARISING UNDER SECTION 6, "CONFIDENTIAL INFORMATION", AND CLAIMS FOR PERSONAL INJURY, DEATH OR DAMAGE TO PROPERTY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR LOST PROFITS, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, HOWSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE BASIS OF THE CLAIM.

#### 9. INDEPENDENT CONTRACTORS

TIAA and Supplier are acting hereunder as independent contractors. Supplier shall not be considered or deemed to be an agent, employee, joint venture, or partner of TIAA. Supplier is not authorized to, and shall not make any agreements or representations on behalf of TIAA or any Affiliate of TIAA. If any federal, state or local government agency, court or other applicable entity determines that any Supplier personnel is an employee of TIAA for any purpose, or if any Supplier Personnel claims to be an employee of TIAA or takes legal action against TIAA on that basis, Supplier shall indemnify, defend and hold harmless TIAA, TIAA's Representatives, successors and permitted assigns from all Damages associated with such legal action or determination.

#### 10. PUBLICITY AND USE OF TRADEMARKS

Supplier shall not use the names, addresses, logos, trademarks, trade names or any facsimile thereof of TIAA, TIAA Affiliates or TIAA's customers or consumers, or prospective customers or consumers in publicity releases, promotional material, advertising, marketing or business generating efforts of any nature, including, but not limited to, social media sites (e.g., Facebook, Twitter, etc.), without TIAA's prior written consent.

#### 11. INSURANCE

Supplier agrees that during the term of this Agreement Supplier shall comply with the insurance requirements set forth on Schedule B, which is attached hereto and incorporated herein by reference. The amounts, coverage or types of insurance shown in Schedule B do not limit Supplier's liability nor relieve Supplier of all obligations under this Agreement. TIAA makes no representation as to the adequacy of the insurance coverages and limits shown in



Schedule B. Supplier shall obtain any additional insurance which Supplier deems appropriate to protect TIAA and Supplier.

## 12. CHANGE ORDER PROCEDURES

In the event that TIAA requests to change the scope of the Services provided pursuant to this Agreement, then Supplier shall prepare and deliver to TIAA within five (5) business days a proposed Change Order detailing the impact the change will have on the timeline for delivery of the Services and an estimate of the additional fees and expenses that will be incurred in connection therewith. The Parties shall execute a Change Order prior to implementation of any change in the scope of Services pursuant to this Section.

## 13. AUDIT

Supplier shall maintain complete and accurate books, records and accounts to support and document fees and expenses charged to TIAA in accordance with this Agreement. Supplier shall keep, at no additional cost to TIAA, in a reasonably accessible location, all such Supplier Records for a period of seven (7) years or as required by law, if longer. The Supplier Records may be inspected, audited and copied by TIAA, TIAA Representatives or federal or state agencies having jurisdiction over TIAA during normal business hours and at such reasonable times as TIAA and Supplier may determine. Records available for review shall exclude any records pertaining to Supplier's other customers, which shall be deemed proprietary and confidential.

## 14. DISPUTE RESOLUTION

This Agreement and performance hereunder and actions related hereto shall be governed by the laws of the State of New York, without regard to its conflict of laws principles, except for Section 5-1401 of the New York General Obligations Law. Furthermore, the Parties hereby agree that except to the extent prohibited by applicable law, the Uniform Commercial Code and the Uniform Computer Information Transactions Act as adopted in any form in any state shall not apply to this Agreement. The Parties agree that the highest-ranking representative of each Party who is familiar with the transactions in dispute shall promptly meet to attempt a good faith resolution all disputes between the parties arising out of or relating to this Agreement ("Dispute Meeting"). If a resolution can not be reached within five (5) Business Days of the Dispute Meeting, then the Parties agree to submit any dispute in connection with this Agreement to binding arbitration. A Party shall give written notice to the other of an intent to arbitrate and the Parties shall thereafter attempt to decide upon a private arbitration service. The rules of the arbitration shall be those in general use by the arbitration service, except as modified by this Section or otherwise agreed to in writing by the Parties. In the event there is no agreement on an arbitration service on or within thirty (30) days of the date of notice of an intent to arbitrate, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with the Commercial Arbitration Rules. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be before one (1) arbitrator agreed upon by each Party and shall be held in New York, New York. Either Party may seek emergency or injunctive relief in court, if necessary, pending any such arbitration. The prevailing Party shall be entitled to recover its reasonable attorneys' fees and expenses of litigation in any such arbitration.

## 15. BUSINESS CONTINUITY

Supplier maintains, and will continue to maintain throughout the Term, a disaster recovery plan and business continuity plan (the "Plans") that permit Supplier to recover from a disaster and continue providing Services to customers, including TIAA, within the recovery time objectives set forth in the Plans or other recovery time objectives as mutually agreed to by the parties hereunder. An executive summary or comprehensive description of the current Plans is attached hereto as Schedule D.

## 16. GENERAL

16.1 This Agreement constitutes the complete and exclusive statement of agreement between the Parties, and supersedes all prior proposals and all other agreements, oral and written, between the Parties relating to the subject matter of this Agreement. Further, no term or condition contained in a TIAA purchase order, Supplier invoice, Supplier request for proposal, or other similar document will apply even if Supplier has accepted an order from TIAA through these documents for any Service specified under this Agreement. This Agreement may be modified only by an

Amendment signed by authorized representatives of each Party. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of such provision or any other provision hereof and no waiver shall be effective unless made in writing. Notwithstanding anything therein to the contrary, the terms and provisions of a Statement of Work shall supplement and not replace or amend the terms or provisions of this Agreement. The terms and provisions of this Agreement shall control in the event of a conflict between the terms and provisions of a Statement of Work and the terms and provisions of this Agreement. The terms and provisions of this Agreement shall be incorporated by reference into any Statement of Work to this Agreement.

16.2 This Agreement is personal to Supplier and Supplier may not assign or subcontract this Agreement or its rights, duties or obligations under this Agreement to any person or entity hereunder without the prior written consent of TIAA, and any such attempted assignment shall be void. This Agreement shall bind and benefit each of the Parties and their respective successors and assigns.

16.3 If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provisions in any other circumstances, and in any other jurisdiction, shall not be affected thereby.

16.4 This Agreement may be executed in one or more counterparts.

16.5 The Agreement, including any Amendment, Statement of Work, Schedule, exhibit or similar attachment incorporated by reference into the Agreement, may be delivered by electronic or fax transmission, and is considered properly executed if an authorized representative expressly signifies the signature of the Party. For the avoidance of doubt, a typed name or signature block at the end of an email, text message or similar electronic message or series of messages shall not constitute an authorized signature of a Party.

16.6 Any notice given under this Agreement shall be in writing and addressed as shown on page 1 to: General Counsel: TIAA and named Supplier; with a copy to: Vice President- General Counsel, Corporate Law-Business Affairs, Teachers Insurance and Annuity Association of America, 730 Third Avenue, New York, New York 10017-3206. A notice shall be effective, and an invoice shall be deemed received (i) upon receipt if delivered by hand, (ii) three (3) days after deposit in the U.S. mails, postage prepaid, certified mail return receipt requested, or (iii) upon signed receipt if delivered by overnight courier. Either Party may change its address at any time by giving written notice of the change.

IN WITNESS THEREOF, the Parties have executed this Agreement as of the dates set forth below.

**TEACHERS INSURANCE AND ANNUITY  
ASSOCIATION OF AMERICA**

By: \_\_\_\_\_

(Authorized Signature)

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

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

Date: \_\_\_\_\_

*[Handwritten Signature]*  
ANT. MORTENSON  
SENIOR SOURCING MGR  
11/28/2011

**MARKIT ON DEMAND, INC.**

By: \_\_\_\_\_

(Authorized Signature)

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

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

Date: \_\_\_\_\_

*[Handwritten Signature]*  
James Tanner  
Global Head, Markit on Demand  
12/6/11

michael@justbuildit.com - Jul 29, 2024, 1:14:36 PM America/New\_York