

## **MASTER SUBSCRIPTION AGREEMENT**

This Master Subscription Agreement ("Agreement") is entered into and effective as of 11/8/2017 ("Effective Date") by and between TIER1 SYSTEMS, Inc., a Delaware corporation, having its principal place of business at Two Market St, San Francisco, California 94105 ("TIER1 SYSTEMS") and ABC Corporation, a California corporation, having its principal place of business at 170 West Tasman Drive, San Jose, California 95134 ("Customer").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **1. Definitions.**

"**Affiliate**" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**Total Agreement Value**" means fees payable to a value of \$

"**Customer Data**" means all electronic data or information submitted by Customer to the Service.

"**Malicious Code**" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"**Order Form**" means the ordering documents for Customer's purchases from TIER1 SYSTEMS that are executed hereunder by the parties from time to time. Order Forms shall be deemed incorporated herein.

"**Service**" means the online, Web-based application provided by TIER1 SYSTEMS via [http://www.TIER1\\_SYSTEMS.com](http://www.TIER1_SYSTEMS.com) and/or other designated websites, including associated offline components but excluding AppExchange applications, as described by the User Guide.

"**User Guide**" means the online user guide for the Service, accessible via <http://www.salesforce.com>, as updated from time to time.

"**Users**" means individuals who are authorized by Customer to use the Service, for whom subscriptions to the Service have been purchased,

and who have been supplied user identifications and passwords by Customer (or by TIER1 SYSTEMS at Customer's request). Users may include but are not limited to employees, consultants, contractors and agents of Customer or its Affiliates.

### **2. Service.**

**2.1 Provision of Service.** TIER1 SYSTEMS shall make the Service available to Customer and its Users pursuant to this Agreement and all Order Forms during a subscription term. Customer agrees that its purchase of subscriptions is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by TIER1 SYSTEMS with respect to future functionality or features.

**2.2 Additional Users.** User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Service. Unless otherwise specified in the relevant Order Form, (i) additional User subscriptions must be added in minimum increments of 10; (ii) the term of the additional User subscriptions shall be coterminous with the expiration of the subscription term in effect at the time the additional Users are added; and (iii) pricing for the additional User subscriptions shall be the same as that for the pre-existing subscriptions, prorated for the remainder of the subscription term in effect at the time the additional Users are added.

**2.3 Uplifts.** Upon renewal of the products after the end of their original term an uplift of % will be applied unless otherwise negotiated prior to renewal.

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### **3. Use of the Service.**

**3.1 Support.** In addition to its confidentiality obligations hereunder, not use, modify or disclose to anyone other than Users the Customer Data; (ii) maintain the security and integrity of the Service and the Customer Data; (iii) provide basic support to Customer's Users, at no additional charge; (iv) use commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which TIER1 SYSTEMS shall give at least 8 hours notice via the Service and which TIER1 SYSTEMS shall schedule to the extent reasonably practicable during the weekend hours from 6:00 p.m. PT Friday to 3:00 a.m. PT Monday); or (b) any unavailability caused by circumstances beyond TIER1 SYSTEMS's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving TIER1 SYSTEMS employees), computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within TIER1 SYSTEMS's possession or reasonable control, and denial of service attacks.

**3.2 Customer Responsibilities.** Customer is responsible for all activities that occur in User accounts and for Users' compliance with this Agreement. Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify TIER1 SYSTEMS promptly of any such unauthorized access or use; and (iii) comply with all applicable local, state, federal and foreign laws in using the Service.

**3.3 Use Guidelines.** Customer shall use the Service solely for its internal business purposes as contemplated by this Agreement and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than to Users or as

otherwise contemplated by this Agreement; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (iv) send or store Malicious Code; (v) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Service or its related systems or networks.

**3.4 Third-Party Providers.** Certain third-party providers, some of which may be listed on pages within TIER1 SYSTEMS's website and including providers of AppExchange applications, offer products and services related to the Service, including implementation, customization and other consulting services related to customers' use of the Service and applications (both offline and online) that work in conjunction with the Service, such as by exchanging data with the Service or by offering additional functionality within the user interface of the Service through use of the Service's application programming interface. TIER1 SYSTEMS does not warrant any such third-party providers or any of their products or services, whether or not such products or services are designated by TIER1 SYSTEMS as "certified," "validated" or otherwise. Any exchange of data or other interaction between Customer and a third-party provider, and any purchase by Customer of any product or service offered by such third-party provider, is solely between Customer and such third-party provider. In addition, from time to time, certain additional functionality (not defined as part of the Service) may be offered by TIER1 SYSTEMS to Customer, for an additional fee, on a pass-through or OEM basis pursuant to terms specified by the licensor and agreed to by Customer in connection with a separate purchase by Customer of such additional functionality. Customer's use of any such additional functionality shall be governed by such terms, which shall prevail in the event of any inconsistency with the terms of this Agreement. No purchase of such third-party products or services is required to use the Service.

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**3.5 Google AdWords Program.** Service features that interoperate with the Google AdWords program depend on the continuing availability of the Google AdWords application programming interface ("API") and program for use with the Service. If Google Inc. ceases to make the Google AdWords API or program available on reasonable terms for the Service, TIER1 SYSTEMS may cease providing such Service features without entitling Customer to any refund, credit, or other compensation.

**3.6 Publicity.** Neither party may issue press releases relating to this Agreement without the other party's prior written consent. Either party may include the name and logo of the other party in lists of customers or vendors in accordance with the other party's standard guidelines.

### **4. Fees & Payment.**

**4.1 User Fees.** Customer shall pay all fees specified in all Order Forms hereunder. Except as otherwise provided, all fees are quoted and payable in United States dollars. Except as otherwise specified herein or in an Order Form, fees are based on services purchased and not actual usage, payment obligations are non-cancelable, fees paid are non-refundable, and the number of subscriptions purchased cannot be decreased during the relevant subscription term stated on the Order Form. Because fees are based on monthly units, fees for subscriptions purchased in the middle of a monthly period will be charged for that monthly period in full and going forward based on the number of monthly periods remaining in the subscription term.

**4.2 Invoicing & Payment.** Fees for the Service will be invoiced in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, charges are due net 30 days from the invoice date. Customer is responsible for maintaining complete and accurate billing and contact information on the Service.

**4.3 Overdue Payments.** Any payment not received from Customer by the due date may accrue (except with respect to charges then under

reasonable and good faith dispute), at TIER1 SYSTEMS's discretion, late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

**4.4 Suspension of Service.** If Customer's account is 30 days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, TIER1 SYSTEMS reserves the right to suspend the Service provided to Customer, without liability to Customer, until such amounts are paid in full.

**4.5 Taxes.** Unless otherwise stated, TIER1 SYSTEMS's fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on TIER1 SYSTEMS's net income or property. If TIER1 SYSTEMS has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides TIER1 SYSTEMS with a valid tax exemption certificate authorized by the appropriate taxing authority.

### **5. Proprietary Rights.**

**5.1 Reservation of Rights.** Subject to the limited rights expressly granted hereunder, TIER1 SYSTEMS reserves all rights, title and interest in and to the Service, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

**5.2 Restrictions.** Customer shall not (i) modify, copy or create derivative works based on the Service; (ii) frame or mirror any content forming part of the Service, other than on Customer's own intranets or otherwise for its own internal business purposes; (iii) reverse engineer the Service; or (iv)

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access the Service in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics of the Service.

### **5.3 Federal Government End Use Provisions.**

TIER1 SYSTEMS provides the Service, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Service include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with TIER1 SYSTEMS to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

**5.4 Customer Data.** As between TIER1 SYSTEMS and Customer, Customer exclusively owns all rights, title and interest in and to all Customer Data. Customer Data is deemed Confidential Information under this Agreement. TIER1 SYSTEMS shall not access Customer's User accounts, including Customer Data, except to respond to service or technical problems or at Customer's request.

**5.5 Suggestions.** TIER1 SYSTEMS shall have a royalty-free, worldwide, transferable, sublicensed, irrevocable, perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Customer or its Users relating to the operation of the Service.

## **6. Confidentiality.**

### **6.1 Definition of Confidential Information.**

As used herein, "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**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 the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms hereunder), the Customer Data, the Service, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information (except for Customer Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

**6.2 Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission.

**6.3 Protection.** Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care).

**6.4 Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing

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Party's cost, if the Disclosing Party wishes to contest the disclosure.

**6.5 Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

### **7. Warranties & Disclaimers.**

**7.1 Warranties.** Each party represents and warrants that it has the legal power to enter into this Agreement. TIER1 SYSTEMS represents and warrants that (i) it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) the Service shall perform materially in accordance with the User Guide; (iii) the functionality of the Service will not be materially decreased during a subscription term; (iv) the Service will not contain or transmit to Customer any Malicious Code (except for any Malicious Code contained in User-uploaded attachments or otherwise originating from Users); (v) it owns or otherwise has sufficient rights in the Service to grant to Customer the rights to use the Service granted herein; and (vi) the Service does not infringe any intellectual property rights of any third party.

**7.2 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, TIER1 SYSTEMS MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

### **8. Mutual Indemnification.**

**8.1 Indemnification by TIER1 SYSTEMS.** Subject to this Agreement, TIER1 SYSTEMS shall defend, indemnify and hold Customer harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("**Claims**") made or brought against Customer by a third party alleging that the use of the Service as contemplated hereunder infringes the intellectual property rights of a third party; provided, that Customer (a) promptly gives written notice of the Claim to TIER1 SYSTEMS; (b) gives TIER1 SYSTEMS sole control of the defense and settlement of the Claim (provided that TIER1 SYSTEMS may not settle or defend any Claim unless it unconditionally releases Customer of all liability); and (c) provides to TIER1 SYSTEMS, at TIER1 SYSTEMS's cost, all reasonable assistance.

**8.2 Indemnification by Customer.** Subject to this Agreement, Customer shall defend, indemnify and hold TIER1 SYSTEMS harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against TIER1 SYSTEMS by a third party alleging that the Customer Data, or Customer's use of the Service in violation of this Agreement, infringes the intellectual property rights of, or has otherwise harmed, a third party; provided, that TIER1 SYSTEMS (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases TIER1 SYSTEMS of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance.

### **9. Limitation of Liability.**

**9.1 Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES

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HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **10. Term & Termination.**

**10.1 Term of Agreement.** This Agreement commences on the Effective Date and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated.

**10.2 Term of User Subscriptions.** User subscriptions commence on the start date specified in the relevant Order Form and continue for the subscription term specified therein. User subscriptions shall automatically renew for additional periods of one (1) year at the list price in effect at the time of renewal unless either party gives the other notice of non-renewal at least 30 days prior to the end of the relevant subscription term.

**10.3 Termination Cause.** A party may terminate this Agreement for cause: (i) upon 30 days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination for cause by Customer, THE COMPANY shall refund Customer any prepaid fees covering the remainder of the subscription term after the date of termination.

**10.3 Surviving Provisions.** The following provisions shall survive any termination or expiration of this Agreement: Sections 4 through 11

### **11. General Provisions.**

**11.1 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture,

agency, fiduciary or employment relationship between the parties.

**11.2 No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**11.3 Notices.** All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; (iii) the second business day after sending by confirmed facsimile; or (iv) the second business day after sending by email. Notices to TIER1 SYSTEMS shall be addressed to the attention of its VP, Finance – Worldwide Sales Operations, with a copy to its General Counsel. Notices to Customer shall be addressed to Customer's signatory of this Agreement unless otherwise designated below.

**11.4 Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**11.5 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall 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 of this Agreement shall remain in effect.

**11.6 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any attempt by a party to assign its rights or

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obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**11.7 Governing Law.** This Agreement shall be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules.

**11.8 Venue; Waiver of Jury Trial.** The state and federal courts located in San Francisco County, California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction of such courts. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

**11.9 Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its

subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

**11.10 Counterparts.** This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

IN WITNESS WHEREOF, the parties' authorized signatories have duly executed this Agreement as of the Effective Date:

<b>Electronic Signature Disclosure</b>
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**By signing and accepting below you are acknowledging that you have read and agree to the terms and conditions outlined in this document.**

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**Authorized Signature for TIER1 SYSTEMS**

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**Authorized Signature for Customer**

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**Printed Name and Title**

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**Printed Name and Title**

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\_\_\_\_\_  
**Date Signed**

\_\_\_\_\_  
**Date Signed**

Name and/or title of person authorized to receive  
notices for customer under this Agreement (if  
different from above):

\_\_\_\_\_  
\_\_\_\_\_



**MASTER SUBSCRIPTION AGREEMENT**

Exhibit A – Order Form

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**Exhibit A – Order Form**

**Total: \$**