



Enterprise Service Agreement

This **Enterprise Service Agreement** ("Agreement") is entered into by and between SendSafely LLC ("**SendSafely**"), a Limited Liability Company registered in Delaware, United States having its principal office located at 1460 Broadway, 4th Floor, New York, NY 10036, and AppDynamics LLC having its principal office located at 303 2nd Street, North Tower, 8th Floor, San Francisco, CA 94107 ("**Customer**"). This Agreement describes the terms and conditions under which SendSafely will provide access to their web based application to facilitate secure data exchange (the "**Service**") for Customer as further described in this Agreement and the corresponding Service Level and Pricing Agreement (a form of which is attached hereto as Exhibit A) and that has been provided to the Customer by SendSafely and by this reference made a part of this Agreement. By signing your contract for the Service or using the Service, you agree to this Agreement as a Customer. If you are agreeing to this Agreement for use of the Service by an organization, you are agreeing to this Agreement on behalf of that organization. You must have the authority to bind that organization to this Agreement, otherwise you must not sign up for the Service.

1. Term of Agreement

1.1. Term. This Agreement shall commence on the "**Commencement Date**". Either party may terminate this Agreement for any reason, without penalty, by providing the other party with thirty (30) days prior written notice. In addition, this Agreement may be terminated at any time during the Term immediately by either party: (i) upon the breach by the other party of any of such other party's obligations hereunder, which breach has not been cured within fifteen (15) days after the breaching party has received written notice thereof.

1.2. Effects of Termination. Upon any termination: (i) the rights granted by SendSafely to Customer will cease immediately (except as set forth in this section); (ii) SendSafely will provide Customer access to its account at then-current fees for a minimum of ninety (90) days, so that Customer may export its Customer Data; and (iii) upon expiration of the ninety (90) day period as referenced above, SendSafely will delete any Customer Data relating to Customer's account. SendSafely will refund any pre-paid and unused fees, if the Customer had paid any. SendSafely will provide an affidavit affirming destruction of Customer Data.

2. The Service and SendSafely Software

2.1. Use of the Service. Customer and of Customer's Service account ("**End Users**") may access and use the Service only in accordance with this Agreement.

2.2. SendSafely Software. Some portions of the Service allow or require Customer and its End Users to download SendSafely software ("**Software**") which may update automatically. Customer may use the Software only to access the Service. If any component of the Software is offered under an open source license, SendSafely will make the license available to Customer and the provisions of that license may expressly override some of the terms of this Agreement.

3. Customer Responsibilities

Customer is responsible for use of the Service by its End Users. Customer and its End Users must use the Service in compliance with the terms of this Agreement. Customer will obtain from End Users any consents necessary to allow administrators of Customer's account to engage in the activities described in this Agreement and to allow SendSafely to provide the Service. Customer will at all times comply with laws and regulations applicable to Customer's use of the Service, if any.

3.1. Customer Administration of the Service. Customer may specify End Users as "**Administrators**" through the administrative console. Administrators may have the ability to access, disclose, restrict or remove Customer Data in or from Service accounts. Administrators may also have the ability to monitor, restrict, or terminate access to Service accounts. SendSafely's responsibilities do not extend to the internal management or administration of the Service. Customer is responsible for: (i) maintaining the confidentiality of passwords and Administrator accounts; (ii) managing access to

Administrator accounts; and (iii) ensuring that Administrators' use of the Service complies with this Agreement.

3.2. Unauthorized Use & Access. Customer will prevent unauthorized use of the Service by its End Users and terminate any unauthorized use of or access to the Service. The Service is not intended for End Users under the age of 13. Customer will ensure that it does not allow any person under 13 to use the Service. Customer will promptly notify SendSafely of any unauthorized use of or access to the Service.

4. Performance

The Service shall perform in accordance with its intended purpose as set forth and in accordance with this Agreement. The availability of Service may be affected by the following events.

4.1. Scheduled Network Maintenance. Except for Routine Maintenance (as defined below) and Force Majeure Events, SendSafely shall ensure that the Service is Available at least 99.5% of the time during each month of the Term hereof. "Available" means the website is responsive to standard HTTPS requests, and that it is fully functional. "Routine Maintenance" means the amount of time, not to exceed 8 hours per month, for SendSafely's performance of maintenance, updates or error correction for the software, hardware, equipment and/or other infrastructure supporting the SendSafely Service, provided such work takes place only during weekends or after regular business hours in the time zones where the Customers are located, and that they provide Customer at least seven (7) day notice prior to the Routine Maintenance. During any month in which SendSafely fails to meet the target Service availability level, SendSafely shall provide Customer with a pro rata credit against the fees otherwise payable by Customer for such month. If there are two (2) consecutive months or a total of three (3) months in which SendSafely fails to meet the target Application availability level, then Customer may terminate this Agreement immediately and SendSafely will reimburse to the Customer a pro-rata refund of the Services fees that have been paid in advance for the remainder of the Term.

4.2. Force Majeure - If SendSafely shall be prevented from performing any portion of the Agreement by causes beyond its control, including labor disputes, war, governmental regulations or controls, casualty, inability to obtain materials or services or acts of God, SendSafely shall be excused from providing the Service for the period of the delay and for a reasonable time thereafter.

5. Compensation and Payment Terms

5.1. Compensation for Service - Customer shall pay all the amounts specified in the Service Level and Pricing Agreement agreed to between the parties (a form of which is attached hereto as Exhibit A).



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5.2. Invoicing - Service fees shall be calculated by SendSafely on a monthly or annual basis and invoiced to Customer at the end of each billing period.

6. Payment - Payment shall be due thirty (30) days from the date of receipt of SendSafely's invoice. All fees are non-refundable except as required by law. Customer is responsible for providing complete and accurate billing and contact information to SendSafely. All payments shall be made in U.S. dollars. All invoices must be sent to accountspayable@appdynamics.com.

6.1. Taxes - Payments made by Customer to SendSafely are exclusive of applicable taxes. Customer will pay and bear the liability for any taxes associated with the Service. If Customer is required to withhold taxes, Customer will furnish SendSafely receipts substantiating such payment. If SendSafely is required to remit any tax or duty on behalf or for the account of Customer, Customer will reimburse SendSafely within thirty (30) days after SendSafely notifies Customer in writing of such remittance.

6.2. Pricing Changes. SendSafely shall provide Customer with ninety (90) days prior written notice of price changes.

7. Warranties

7.1. Intellectual Property - SendSafely warrants that: (i) it is the sole owner of the application used to render the Service, or has all the necessary rights to render the Service and grant the licenses under this Agreement; (ii) the rendition of the Service will not infringe upon any patent, copyright, trade secret, or other proprietary or intellectual property right of any entity not a party to this Agreement; and (iii) the Service is provided free of viruses, malware or other malicious or destructive programs or features.

7.2. Legal Status - Each party warrants that it is duly organized and in good standing under the laws of the jurisdiction in which it is organized and has the authority and power to enter into the Agreement and perform its obligations hereunder.

7.3. Express Disclaimer of Warranties - THE SERVICE IS PROVIDED "AS IS." EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES HEREIN SET FORTH, NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR NON-INFRINGEMENT, ARE MADE BY SENDSAFELY FOR ANY SERVICE PERFORMED HEREUNDER.

8. Indemnification

To the maximum extent allowed by law, SendSafely (the "Indemnitor") will indemnify and hold harmless Customer and its respective directors, officers, employees, and agents (the "Indemnitees"), from and against any and all third party claims, losses, damages, suits, fees, judgments, costs and expenses (collectively referred to as "Claims"), including reasonable attorneys' fees incurred in responding to such Claims, that the Indemnitees may suffer or incur arising out of or in connection with (a) the Indemnitor's negligence, willful misconduct, or breach of any representation, warranty, or other obligation under this Agreement, (b) the Indemnitor's infringement or violation of any

patent, copyright, trade secret, trademark, or other third party intellectual property right; or (c) any personal injury (including death) or damage to property resulting from the Indemnitor's or its agents' acts or omissions. The Indemnitees will give prompt notice of any Claim to the Indemnitor, and the Indemnitor will defend the Indemnitees at the Indemnitees' request.

9. Limitation of Liability.

9.1. LIABILITY - TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT FOR SENDSAFELY'S INDEMNIFICATION OBLIGATIONS IN SECTION 8 AND SENDSAFELY'S PROPRIETARY RIGHTS OBLIGATIONS IN SECTION 10, A PARTY'S LIABILITY FOR ANY CLAIM ARISING UNDER OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL NOT EXCEED THE AMOUNT PAID, AND ANY AMOUNTS OWED BUT NOT YET PAID, FOR THE SERVICE DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY.

9.2. TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT FOR SENDSAFELY'S INDEMNIFICATION OBLIGATIONS IN SECTION 8 AND SENDSAFELY'S PROPRIETARY RIGHTS OBLIGATIONS IN SECTION 10, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, (INCLUDING LOSS OF PROFITS OR BUSINESS) ARISING UNDER OR RELATING TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. Proprietary Rights

10.1. SendSafely's Proprietary Rights - The Service is and shall remain the property of SendSafely.

10.2. Customer's Proprietary Rights - As between Customer and SendSafely, Customer Data shall be the sole and exclusive property of Customer. "Customer Data" means Customer's confidential, proprietary or trade secret information and any trademarks, copyrights or patents of Customer, and/or any data provided by Customer and used in connection with the Service and any records or information created in the course of use of the Service by Customer and its End Users; including any 'personal data' and 'processing' where such terms shall have the meanings given to them in the Data Protection Act 1998 and references to 'Personal Data' are to the personal data of Customer.

10.3. Data Protection. Each party shall comply with its respective obligations under all applicable data protection legislation in force during the Term of this Agreement including, the Data Protection Act 1998 and, if applicable, any equivalent legislation deriving from the EU Data Protection Directive (95/46/EC) elsewhere in the European Union. References in this Clause to and "personal data" shall have the meanings defined in the Act/equivalent legislation.

Where SendSafely, as part of the fulfilment of its obligations under this Agreement, processes personal data on behalf of AppDynamics, SendSafely shall:

- (a) act only on instructions from, and comply with all instructions from, AppDynamics when processing personal data provided to it under this Agreement, and keep records of all such processing;



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- b) having regard to the state of technological development, the nature of the personal data processed and the harm that could occur to AppDynamics or the relevant individuals or both if the personal data was accessed unlawfully or without authorization or was lost, destroyed or damaged, at all times take all appropriate technical and organizational measures against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
 - c) not transfer any personal data outside the European Economic Area without AppDynamics prior written consent;
 - d) immediately notify AppDynamics if it receives any complaint, notice or communication which relates directly or indirectly to the processing of personal data under this Agreement, provide full co-operation and assistance in relation to any such complaint, notice or communication;
 - e) take all reasonable steps to ensure the reliability of any of its staff who have access to personal data processed in connection with this Agreement including that they have undertaken relevant training;
 - f) only appoint another person or organization to process the personal data on SendSafely's behalf on terms at least as stringent as those in this Clause 10;
 - g) at all times perform its obligations under this Agreement in such a manner as not to cause AppDynamics in any way to be in breach of the Act or any equivalent legislation;
 - h) not disclose any personal data to any third party unless required to do so by law, court order, or any other statutory body or agency;
 - i) provide such information as is reasonably necessary to enable AppDynamics to satisfy itself of SendSafely's compliance with this Clause 10 and allow AppDynamics, its authorized agents or advisers upon prior written notice to SendSafely reasonable access to any relevant premises, systems or database, during normal business hours to inspect the procedures and measures referred to in this Clause 10;
 - j) provide reasonable assistance to the AppDynamics in complying with any subject access request and/or responding to any enquiry made, or investigation or assessment of processing initiated by a national data protection regulator in respect of the personal data as soon as is possible and in any event within the time period applicable to such compliance by AppDynamics by reference to the Data Protection Act 1998 (or relevant local law);
 - k) promptly inform AppDynamics of any request for disclosure of personal data from any individual or any other third party which it receives directly and provide a copy of such request without disclosing or releasing any personal data to such third party without first consulting and obtaining the consent of AppDynamics;
 - l) on termination of this Agreement, and at any time on the request of AppDynamics either return the personal data in the format requested by the AppDynamics or destroy the personal data (including all copies of it), in either case within 5 business days.
- 10.4. **Data Breach.** If an instance of unauthorized or unlawful processing or accidental loss or destruction or damage occurs in relation to any personal data processed by SendSafely (a "Data Breach"), SendSafely shall:
- (a) promptly inform AppDynamics of the Data Breach;
 - (b) promptly take all steps necessary to identify the cause of the Data Breach;
 - (c) as soon as possible following the Data Breach, provide AppDynamics with a written report setting out the details of the Data Breach, the cause of the Data Breach, any steps taken stop the Data Breach or mitigate its effects and any other relevant information about the Data Breach or its effects;
 - (d) take any steps required by AppDynamics to stop the Data Breach or mitigate the effects of the Data Breach;
 - (e) provide all necessary assistance and resources to AppDynamics to manage the Data Breach and its effects;
 - (f) provide full copies of all communications received in relation to the Data Breach or any regulatory or law enforcement body; and
 - (g) not make any communication externally to any party about the Data Breach without approval from AppDynamics of the contents of the communication.
- 10.5. **Security.** SendSafely represents and warrants that it (1) will utilize subcontractors that will maintain SOC 2 certification, (2) maintain a written information security program appropriate for the Service, (3) follows industry-standard policies and provides features and internal practices to protect the security and integrity of Customer Data, (4) detect and prevent intrusions to the Service, and (5) require obligations consistent with the foregoing of SendSafely's providers related to the Service and ensure such providers are subject to appropriate information security diligence reviews. SendSafely will notify Customer as soon as possible to security@appdynamics.com of any actual, suspected or threatened Security Incident (as defined below) involving Customer Data. The notification provided to Customer shall include, if known, and to SendSafely's knowledge as of the time of notice: (i) the general circumstances and extent of any unauthorized access to Customer Data or intrusion into the computer systems or facilities on or in which Customer Data is maintained; (ii) which categories of Customer Data were involved; (iii) the identities of all individuals whose Company Personal Information was affected; and (iv) steps taken to secure the data and preserve information for any necessary investigation. The notification required to be delivered to Customer under this Section shall be delivered promptly and in no event later than twenty-four (24) hours after SendSafely learns of any such actual, suspected or threatened Security Incident. SendSafely shall not delay its notification to Customer for any reason, including, without limitation, investigation purposes. SendSafely shall cooperate fully with Customer in investigating and responding to each successful or attempted security breach including allowing immediate access to SendSafely's facility by Customer or Customer's investigator, to investigate, and obtain copies of data as provided herein. "Security Incident" is when SendSafely



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knows or has reason to know that: (i) SendSafely has experienced an incident resulting in the unauthorized acquisition or unauthorized use of unencrypted Customer Data, or encrypted Customer Data and the confidential process or key that is capable of compromising the security, confidentiality or integrity of Customer Data that creates a substantial risk of identity theft or fraud; or (ii) Customer Data was acquired or used by an unauthorized person or used for an unauthorized purpose. In the event of any Security Incident, SendSafely will assist Customer to provide notification and take other reasonable actions that Customer, in Customer's reasonable discretion, determines necessary in mitigating the effects of such Security Incident, at SendSafely's sole cost and expense, including but not limited to reimbursement of Customer's reasonable out-of-pocket expenses in providing notification, credit reports and otherwise complying with the law with respect to such Security Incident, and such costs and expenses shall not be subject to the limitation of liability in Section 9.

10.6. Limited License. Customer grants SendSafely only the limited rights that are reasonably necessary for SendSafely to offer the Service (e.g., hosting Customer Data). This permission also extends to trusted third parties SendSafely works with to offer the Service (e.g., payment provider used to process payment of fees), provided that (i) SendSafely shall procure that such third parties comply with the terms of this Agreement, and SendSafely shall remain responsible and liable for all acts and omissions of such third parties; (ii) SendSafely represents that it can bind such third parties to the terms this Agreement.

11. Disputes

11.1. Agreement to Informally Resolve Dispute. SendSafely wants to understand and address your concerns quickly and to your satisfaction. Before filing a claim, each party agrees to try to resolve the dispute by contacting the other party through the notice procedures in Section 11.1. If a dispute is not resolved within thirty

(30) days of notice, Customer or SendSafely may bring a formal proceeding.

11.2. Agreement to Arbitrate. All Disputes shall be resolved finally and exclusively by binding individual arbitration with a single arbitrator administered by the American Arbitration Association (www.adr.org) or JAMS (www.jamsadr.com) according to this provision and the applicable arbitration rules for that forum.

12. General Provisions

12.1. Notice. Unless otherwise agreed to by the parties, all notices shall be deemed effective when made in writing and received by either (i) registered mail, (ii) certified mail, return receipt requested, or (iii) overnight mail. Notices to Customer may also be sent to the email address associated with Customer's account and are deemed effected when sent. All notices to SendSafely shall be sent to: SendSafely, LLC, 40 East Main Street #897, Newark, DE 19711-4639.

12.2. Force Majeure. If either party shall be prevented from performing any portion of this Agreement by causes beyond its control, including labor disputes, civil commotion, war, governmental regulations or controls, casualty, inability to obtain materials or services or acts of God, such defaulting party shall be excused from performance for the period of the delay and for a reasonable time thereafter.

12.3. Independent Contractor. Nothing in this Agreement, and no course of dealing between the parties, shall be construed to create an employment or agency relationship or a partnership between a party and the other party or the other party's employees or agents. Each party shall be solely responsible for payment of its employees' salaries (including withholding of income taxes and social security), workers compensation, and all other employment benefits.

12.4. Jurisdiction. This Agreement shall be construed in accordance with and governed by the laws of the State of New York and applicable U.S. federal laws, without regard to conflicts of laws provisions.

12.5. Attorneys' Fees. If a party initiates Agreement-related legal proceedings, the prevailing party will be entitled to seek recovery of its reasonable attorneys' fees actually incurred.

12.6. Severability. If any provision or portion of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions or portions shall remain in full force and effect.

12.7. Waiver. No waiver of any Agreement right shall be effective unless in writing signed by an authorized representative of the waiving party. No waiver of a right arising from any breach or failure to perform shall be deemed a waiver of any future right.

12.8. Binding Effect/Assignment. This Agreement is binding upon the parties' respective representatives, successors, and assigns. SendSafely and Customer shall have the right to assign this Agreement Service without the prior consent

12.9. Use of Third Parties. SendSafely may utilize third parties in the performance the Service without the prior consent of Customer, provided that SendSafely shall procure that such third parties comply with the terms of this Agreement, and SendSafely shall remain responsible and liable for all acts and omissions of such third parties.

12.10. Entire Agreement. This Agreement, including the Service Level and Pricing Agreement and any invoice, constitutes the entire agreement between the parties with respect to the subject matter and supersedes any prior agreement or communications between the parties relative thereto, whether written or oral. If there is a conflict between the documents that make up this Agreement, the Agreement shall control.

12.11. Modifications. SendSafely and Customer may modify this Agreement from time to time if agreed by both parties in writing.

12.12. Export Restrictions. The export and re-export of Customer Data via the Service may be controlled by the United States Export Administration Regulations or other applicable export restrictions or embargo. The Service may not be used in Cuba; Iran; North Korea; Sudan; or Syria or any country that is subject to an embargo by the United States and Customer must not use the Service in violation of any export restriction or embargo by the United States or any other applicable jurisdiction. In addition, Customer must ensure that the Service is not provided to persons on the United States Table of Denial Orders, the Entity List, or the List of Specially Designated Nationals.



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Exhibit "A" – Service Level and Pricing Agreement

This Service Level and Pricing Agreement incorporates by reference the Enterprise Service Agreement between Customer and SendSafely LLC ("SendSafely") and is effective as of September 27, 2017.

1. Definitions - The following definitions apply to this Agreement.

- 1.1. **Recipient** - Each individual, identified by an email address, to which Customer sends files through the SendSafely website.
- 1.2. **Active System User** - User accounts registered within the SendSafely website associated with Customer and listed as "Active" in the SendSafely Enterprise Console. User accounts can be de-activated at any time by Customer from the SendSafely Enterprise Console.
- 1.3. **Bandwidth** - The total amount of data uploaded and downloaded per month by each of Customer's Active System Users and their respective Recipients.
- 1.4. **Custom Domain Host** - Custom domain and host name that can be used for hosting SendSafely.

2. Service Fee - Customer shall pay SendSafely the Service Fee outlined below for every month of Enterprise Service, commencing on the Effective Date above and for every month thereafter until this Enterprise Service Agreement is terminated or an amended Service Level and Pricing Agreement is executed. Payment shall be made in accordance with the terms set forth in the Enterprise Service Agreement, and all fees are non-refundable.

The Service Fee will be based on the total number of Active System Users on the first of each month:

- Under 25 Users: \$10 per user/month (minimum 10 users)
- 25-50 Users: \$8 per user/month
- 50-99 Users: \$7 per user/month
- 100-199 Users: \$6 per user/month
- 200-399 Users: \$5.50 per user/month
- Over 400 Users: \$5.25 per user/month

In addition to the above per-user fees, if the customer elects to use a Custom Domain Host there will be an additional charge of \$50 per month, irrespective of the number of Active System Users.

3. Service Level - The total amount of Bandwidth permissible for Customer and its users will be limited to 200GB per month for each Active System User. Bandwidth is granted to Customer based on the number of Active System Users but for purposes of compliance with this agreement will be measured in aggregate across all of Customer's Active System Users and Recipients.

System usage in excess of these levels may result in a written request to execute an amended Service Level and Pricing Agreement, which more accurately reflects the service level of Customer. Failure to execute the amendment request could result in written termination notice of the Enterprise Service Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

Customer

Elise Leung

Full name

General Counsel

Title

Signature

DocuSigned by:

 CB1399659FAB42B...

9/29/2017

Date

SendSafely

Brian Holyfield

Full name

Chief Technology Officer

Title

Signature



Sept 27, 2017

Date