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## Master Services Agreement

This Master Services Agreement ("**Agreement**") is made and entered into as of January 4, 2021 (the "**Effective Date**") by and between Siteimprove, Inc., a California corporation with a business address at 7807 Creekridge Circle, Minneapolis, MN 55439, and its Affiliates (defined below) (collectively, "**Siteimprove**") and AppDynamics LLC and its Affiliates ("**Customer**" / "**you**" / "**your**") for Siteimprove services.

### 1. DEFINITIONS

- a. Interpretation.** Capitalized terms used in these Terms and Conditions will have the meanings ascribed to them in the Agreement or as defined below. Terms other than those defined below will be given their plain English meaning and terms of art having specialized meanings in the software industry will be construed in accordance with industry standards. Unless the context otherwise requires, words importing the singular include the plural and words importing the masculine include the feminine and vice versa where the context so requires.
- b. "Affiliate"** means any entity directly or indirectly controlling or controlled by or in common control with a party, where "control" is defined in this context as the ownership of at least fifty percent (50%) or more of the voting stock or other interest entitled to vote on general decisions reserved to stockholders, partners, or other owners of such entity. An entity shall no longer be an Affiliate when through loss, divestment, dilution or other reduction of ownership, the requisite control no longer exists.
- c. "Confidential Information"** means information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used that either party discloses on or after the Effective Date, to the other party or its parents, affiliates' employees, contractors, officers, directors, partners, agents, attorneys, accountants or advisors. Confidential Information includes: business processes, practices, methods, policies, plans, operations, services, strategies, techniques, agreements, contracts, terms of agreements, transactions, potential transactions, negotiations, pending negotiations, know-how, trade secrets, computer programs, computer software, applications, operating systems, software design, web design, databases, records, financial information, results, accounting information, accounting records, legal information, pricing information, credit information, payroll information, staffing information, internal controls, security procedures, sales information, revenue, costs, communications, original works of authorship, customer information, and customer lists. Confidential Information does not include information that: (a) was in the public domain prior or subsequent to the time such portion was communicated to the receiving party, through no fault of that party; (b) was rightfully in the receiving party's possession free of any obligation of confidence at or subsequent to the time such portion was communicated by the disclosing party; (c) was developed by the receiving party independently of and without reference to any information communicated by the disclosing party; (d) was communicated by the disclosing party to an unaffiliated third party free of any obligation of confidence; or (e) is approved by the disclosing party for release by the receiving party.
- d. "Included Services"** has the meaning set forth in an applicable Software-as-a-Service Subscription Statement of Work.
- e. "Professional Services"** has the meaning set forth in an applicable Manual Accessibility Testing Subscription Statement of Work

### 2. AFFILIATE RIGHTS.

Subject to the terms of this Section, any Customer Affiliate may purchase Included Services or Professional Services directly under this Agreement by entering into a statement of work ("**SOW**") with Siteimprove. Each SOW: (i) will incorporate by reference and be governed by the terms of this Agreement; (ii) is deemed to be a separate contract between the Customer entity that directly entered into the SOW and Siteimprove; and (iii) is an independent contractual obligation from any other SOW. For an SOW directly entered into by a Customer Affiliate, Siteimprove shall perform its obligations under the SOW as if this Agreement had been executed directly between Siteimprove and the Customer Affiliate entering into the SOW. Each Customer entity shall be severally liable for its own obligations under each SOW it has entered into pursuant to this Agreement and shall be bound by and solely responsible for the performance of all of its obligations including, payment obligations, under such SOW.

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### 3. INVOICES; PAYMENTS; PAST-DUE INVOICES; RENEWALS

Unless expressly agreed otherwise, the Fee for the Initial Term will be invoiced on the Effective Date. The Fee during any Renewal Term will be increased by a maximum of 3% above the Fee in the immediately prior term. Customer will pay all invoices within 60 days of issuance. Unless expressly agreed otherwise, all prices are in United States Dollars. There is no charge for updates to, or new releases of, Included Services. However Siteimprove may launch new modules/services/products that are not covered by the Fee. In the event that an invoice becomes past-due, Siteimprove will notify Customer by phone or email. After Siteimprove has provided notice, Customer will have 30 business days to pay the past-due invoice. If Customer fails to make the payment by the end of the cure period, then Siteimprove reserves the right to: (i) begin charging Customer interest for the past-due amount at an interest rate of 1.5% per month, or the highest rate allowed by applicable law, whichever is smaller; (ii) suspend access to the Included Services or Professional Services; or (iii) terminate this Agreement pursuant to Section 4(b) (Termination for Material Breach).

### 4. TERM AND TERMINATION

**a. Term.** This Agreement shall commence on the Effective Date and (unless terminated earlier under this Section 4) its terms shall remain in effect for a period of five (5) years (the “**Initial MSA Term**”). Following the expiration of the Initial MSA Term, this Agreement will automatically renew for one or more additional consecutive periods of 12 months (each, a “**Renewal Term**”) until terminated according to Section 4 (Term and Termination) of the Agreement. The “**Term**” shall collectively be the Initial MSA Term plus all MSA Renewal Terms. In the event any Statement of Work (“**SOW**”) is in effect at the time of expiration of this Agreement, the terms of this Agreement shall continue to remain in effect for the remainder of the SOW (and in which case, the Term shall be equally extended solely for purposes of completion of the Order Form).

**b. For Material Breach.** Either party may terminate this Agreement in the event of a material breach by the other party of its obligations under this Agreement if the other party fails to cure the breach within 30 days after receipt of written notice of breach.

**c. For Convenience.** During the Initial MSA Term or Renewal Term, either party may terminate this Agreement or any SOW at any time for its convenience, with or without cause, by giving written notice to the other party at least 60-days prior to the start of the Renewal Term. Customer remains liable for payment of all Fees owed and shall not be entitled to a credit or refund when the Agreement or SOW is terminated by Customer pursuant to this Section 4(c). Customer shall receive a refund of any prepaid Fees pro-rated to the date of termination if Siteimprove terminates this Agreement or an SOW pursuant to this Section 4(c).

### 5. INCLUDED SERVICES

Subject to the terms and conditions of this Agreement, Siteimprove will allow the Customer to access the Included Services.

**a. Ownership.** Customer acknowledges and agrees that Siteimprove owns and shall remain the sole owner of all intellectual property rights vested in the Included Services created prior to or during the performance by the parties of this Agreement. This ownership right includes any inventions, patents, utility model rights, copyrights, design rights, mask works, trademark rights, or know-how, whether registered or not.

**b. Use.** The right to access the Included Services is worldwide, non-transferable, non-assignable (except as permitted in this Agreement) and limited in time to access and use during the Initial and any Renewal Terms and solely for Customer’s internal business purposes by Customer’s authorized agents. Customer will have access to the Included Services only for those website domain(s) authorized pursuant to this Agreement.

**c. Restrictions.** This right is not a perpetual right to use, and Customer has no right to retain or to use the Included Services after termination of the Initial or Renewal Term. Customer has no right to rent, lease, assign, transfer, sublicense, display or otherwise distribute or make the Included Services available to any third party. Without limiting the generality of any other provisions stated in this Agreement, the Included Services may not be (a) used in the performance of services for or on behalf of any third party or as a service bureau; (b) modified, incorporated into or combined with other software, or created as a derivative work of any part of the Included Services; (c) used to process any sensitive or personal information; or (d) used for any illegal purpose. Customer may not modify, disassemble, decompile or otherwise reverse engineer the Included Services nor permit any third party to do so except as expressly permitted by law. Siteimprove reserves all rights not expressly granted to Customer under this Agreement. The use of Siteimprove’s intellectual property beyond the express access grant in this Section 5 is outside the scope of this Agreement.

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**d. Support.** Siteimprove will provide support to the Customer pursuant to the agreed plan attached as Exhibit C. In no event will Siteimprove be obligated to furnish support for any version of the Included Services that Customer has modified or altered in any way.

**e. Operational Data.** The Included Services are designed to collect certain operational data, which may be used by Siteimprove for various internal business purposes, which may include customer support, verifying the need for and providing updates to the Included Services, market research and product planning, verifying Customer's compliance with the terms and conditions of this Agreement and protecting Siteimprove's intellectual property. If Customer has used the Included Services outside the parameters set forth in the Agreement, Customer will be required to pay additional fees to cover the additional use.

## 6. PROFESSIONAL SERVICES

**a. Service Limits.** Customer and Siteimprove will cooperate in scheduling the Professional Services based on Siteimprove resource availability and documented in a mutually executed SOW. Siteimprove has sole discretion to determine which resources to assign to Professional Services and may use contractors and subcontractors to provide Professional Services. Professional Services do not include any form of remediation; Customer is solely responsible for all remediation based on the results of Professional Services. Siteimprove may subcontract the Services hereunder provided that its subcontractors comply with the terms of this Agreement, and Siteimprove shall remain liable for all acts and omissions of its subcontractors.

**b. IP Ownership.**

1. **Customer Ownership of Deliverables.** Except for any Siteimprove Property (described below), it is the intent of the parties that the deliverables created pursuant to this Agreement will be deemed a work made for hire (as defined by the Copyright Act of 1976). Customer will acquire ownership of the deliverables only after the payment in full of all amounts due by Customer to Siteimprove.
2. **Siteimprove Property.** Siteimprove is and will remain the owner and/or licensee of all right, title and interest in and to its SaaS – which may be used in the creation of any deliverables for Customer – as well as any content otherwise offered through its Professional Services that is not exclusively created as a deliverable pursuant to this Agreement (collectively, "Siteimprove Property"). With the exception of the SaaS which requires a separate written agreement, Customer is granted a limited license to the Siteimprove Property which is worldwide, non-transferable, non-assignable, and limited to internal business use. Customer acknowledges and agrees that this Agreement does not transfer or grant Customer any rights, title, or interest in and to the SaaS.
3. **Perfecting Customer Ownership of Deliverables.** If any deliverables are not considered a work-made-for-hire under applicable law or to the extent that exclusive title or ownership rights may not originally vest in Customer as contemplated hereunder (i.e., may not be deemed works made for hire), Siteimprove, at the standard rate, will provide reasonable and timely assistance and execute all documents necessary to enable Customer to perfect, preserve, register, or record its rights.

**c. Non-Solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, Customer shall not: (a) directly solicit, recruit, employ, hire, or take away any employee of Siteimprove, either for itself or for any other person or entity. The foregoing limitation is only applicable to Siteimprove employees that have provided Professional Services under this Agreement. Notwithstanding the foregoing, nothing shall prevent Customer from employing an employee of Siteimprove who: (x) responds to a general employment advertisement when such solicitation is not specifically directed at that individual; (y) is directed to Customer by employment search firms where such employment search firms are not directed by Customer to initiate discussions with respect to the prospective employment of that individual; or (z) contacts Customer on his or her own initiative without any direct or indirect solicitation by Customer.

**d. Nature of Relationship.** The parties agree the relationship created by this Agreement is that of independent contractor. In performing all of the Professional Services, Siteimprove shall be, and at all times is, acting and performing as an independent contractor with Customer, and not as a partner, co-venturer, agent, or employee of Customer, and nothing contained herein shall be construed to be inconsistent with this relationship or status, and is not granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of Customer or to bind Customer in any manner. Except for any materials, procedures, or subject matter agreed upon between Siteimprove and

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Customer, Siteimprove shall have complete control over the manner and method of performing the Professional Services. Siteimprove understands and agrees to independent contractor status. Siteimprove will be responsible for payment of all Siteimprove employee wages, payroll taxes, employee benefits, and any amounts due for federal and state income taxes and Social Security taxes.

## 7. REPRESENTATIONS AND WARRANTIES

**a. For Siteimprove.** Siteimprove represents and warrants that: (i) it has the full power and authority to enter into and perform its obligations under this Agreement; (ii) this Agreement has been duly authorized, executed and delivered by it and constitutes the valid, legal and binding agreement of it and is enforceable against it; (iii) entering into and performing its obligations under this Agreement will not result in any breach of, or constitute a default under, any other agreement to which it is a party; (iv) the Included Services will perform substantially as described in this Agreement, provided that it is used in accordance with the Agreement, including on the specified domains; and (v) Siteimprove will perform the Services in a professional and workmanlike manner. These representations and warranties are only for the benefit of Customer.

**b. For Customer.** Customer represents and warrants that: (i) it has the full power and authority to enter into and perform its obligations under this Agreement; (ii) this Agreement has been duly authorized, executed and delivered by it and constitutes the valid, legal and binding agreement of it and is enforceable against it; (iii) entering into and performing its obligations under this Agreement will not result in any breach of, or constitute a default under, any other agreement to which it is a party; (iv) it has full and legal right or authorization to display, disclose, transfer, assign or convey the information set forth and accessible on the websites on which the Included Services will be administered and on the pages included in the Professional Services; (v) to the extent it is necessary or required by applicable rules, regulations, or laws, it has obtained consent of data subject(s) to have their data on pages included in the Manual Testing; (vi) the pages included in the Manual Testing do not contain any Protected Health Information or other sensitive data; and (vii) it is aware that the Included Services are designed and developed to handle information that can be viewed on a public website and acknowledges that any data scanned through the Included Services on a Development Site will be processed and stored by Siteimprove just as data scanned on a public website.

**c. Disclaimer.** Except for the express representations and warranties listed in this Agreement, each party makes no representations or warranties of any kind, whether express or implied, and expressly disclaims all warranties of title, non-infringement, merchantability, and fitness for a particular purpose. Siteimprove makes no representation or warranty about certifying Customer's website's compliance with any local, federal, or international standards, rules, directives, regulations, or laws. Unless set forth in this Agreement, no oral or written information or advice given by either party will create a representation or warranty.

## 8. FORCE MAJEURE

No party will be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control ("**Force Majeure Events**"). Force Majeure Events include: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; and (i) shortage of adequate power or transportation facilities. A change in economic circumstances is not a Force Majeure Event. If a Force Majeure Event occurs, the Impacted Party will provide prompt notice to the other party, stating the period of time the failure or delay is estimated to last. In the event that the Impacted Party's failure or delay remains uncured for a period of 30 days following written notice, either party may terminate this Agreement upon five days' written notice.

## 9. LIMITATION OF LIABILITY

**a. In no event will either party or its agents, officers, directors, employees, successors, assigns, or Affiliates be liable to the other party or its agents, officers, directors, employees, successors, assigns, or**

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**Affiliates for any indirect, incidental, consequential, punitive, or other special damages. This limitation includes any loss of profits, business interruption, goodwill, loss of data/content or the restoration of any of those items.**

**b. Except for Siteimprove's breach of Section 10 (Confidentiality), in addition to and without limiting the generality of Section 9(a), the aggregate liability of either party for any and all claims arising out of or relating to this Agreement will, in any circumstances, be limited to the Fees paid or payable by Customer to Siteimprove for the right to access or use the Included Services during the Initial Term or any Renewal Term (as the case may be).**

## 10. CONFIDENTIALITY

Each party will: (a) hold Confidential Information in confidence; (b) use its best efforts to protect Confidential Information in accordance with the same degree of care with which it protects its own Confidential Information; and (c) not disclose the other party's Confidential Information to any third party, except in response to a valid order by a court or other governmental body or as required by law. The receiving party will promptly give notice to the disclosing party of any unauthorized use or disclosure of the disclosing party's Confidential Information. The receiving party agrees to assist the disclosing party in remedying any such unauthorized use or disclosure of the disclosing party's Confidential Information. At any time, upon written request, the receiving party will return or destroy the Confidential Information that the disclosing party has provided to it.

## 11. ASSIGNABILITY

This Agreement is binding upon and will inure to the benefit of the parties, their legal representatives, successors, and assigns. Except as otherwise expressly provided in this Agreement, neither party may assign, transfer, convey or encumber this Agreement or any rights granted in it, either voluntarily or by operation of law, without the prior written consent of the other party. Any attempt to do so is null and void. Notwithstanding the foregoing, a party shall have the right to assign this Agreement to its parent entity or affiliates or to a successor entity in the event of a merger, consolidation, transfer, sale, stock purchase, or public offering, provided the assignee is subject to all obligations of the Agreement.

## 12. NOTICES

Unless expressly set forth in the Agreement, all notices and other communications required by this Agreement must be in writing and sent to the parties at the addresses set forth below via overnight courier service, express postal service, or email with read-receipt. Notices are effective only: (a) upon receipt; and (b) if the party giving the Notice has complied with the requirements of this Section. Notices should be sent to the addresses set forth below:

Siteimprove, Inc.

Attn: Legal Department

7807 Creekridge Circle

Minneapolis, MN 55439

With a copy to:

[legal@siteimprove.com](mailto:legal@siteimprove.com)

[AppDynamics LLC](#)

[Attn: Legal Department](#)

[303 Second Street, North Tower, Eighth Floor](#)

[San Francisco, CA 94107](#)

## 13. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws of State of California and the United States of America, except for its conflicts of law rules and principles. In the event of any suit or proceeding arising out of or related to this Agreement, the courts of [the City and County of San Francisco, CA will have exclusive jurisdiction and the parties will submit to the jurisdiction of those courts.



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## **14. NO WAIVER**

The delay or failure of either party to exercise any right, power, or privilege under this Agreement is not to be treated as a waiver of that right, power, or privilege.

## **15. PUBLICITY**

Subject to Customer's written approval in each instance, and beginning six (6) months after the Effective Date, Siteimprove may reproduce or publicize Customer's trading name, trademarks, logos (the "Marks") and any Included Services utilized by Customer on the corporate website of Siteimprove and in company presentations ("Marketing Materials"). The parties acknowledge that Customer must approve the final written communication or version of any Marketing Materials prior to Siteimprove's publication. Siteimprove's use of Customer's logo shall comply with Customer's branding guidelines. Upon Customer's request, in Customer's sole discretion, Siteimprove must immediately discontinue use of the Marks.

## **16. COUNTERPARTS**

The Agreement may be executed in any number of counterparts. Each counterpart is an original and, when combined with another counterpart, will be treated as part of the same document. Any counterparts of this Agreement may be delivered electronically in PDF format; these formats have the same effect as an original executed counterpart.

## **17. SEVERABILITY**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective to the extent of that prohibition or unenforceability in that jurisdiction. The validity, enforceability, or legality of the remaining provisions will not be affected.

## **18. ENTIRE AGREEMENT**

This Agreement constitutes and expresses the entire agreement and understanding between the parties. This Agreement supersedes any prior communications, understanding, commitments, or agreements, oral or written, with respect to the subject matter of this Agreement. The parties are not relying on any representations or warranties other than those expressly listed in this Agreement. Any standard or boilerplate terms and conditions included on any document provided by one party to another (e.g., click-wrap agreements and purchase orders) are not part of this Agreement and will not be binding on either party. Any changes or modifications to this Agreement must be in writing, acknowledge the intent to amend the terms and conditions of this Agreement and be signed by an authorized representative of both parties before taking effect.

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## Signatures

By signing below, each party acknowledges that it has carefully read and agrees to be bound by the terms of this Agreement.

**SITEIMPROVE Inc.**

**AppDynamics LLC**

DocuSigned by:

*Chase Edwards*

EB7236693275406...

Signature

Chase Edwards

Name

January 7, 2021

Date

DocuSigned by:

*Craig Wickersham*

CE58CECBACD1486...

Signature

Craig Wickersham

Name

January 7, 2021

Date