This Cloud Services Agreement (the "Agreement") is made and entered into as of the date last signed below (the "Effective Date") by and between Acme, Inc., a North Carolina corporation, with offices at 123 East Beach Drive, Bald Head Island NC and its Affiliates ("Acme"), and XXXX., a YYYY corporation, with offices at _____ ("Supplier"). Each of Acme and Supplier may be referred to herein as a "Party", and together, they are referred to as the "Parties".

The following exhibits are incorporated into this Agreement:

<u>Exhibit A</u>:   Order form for Hosted Service, Software and Specifications

<u>Exhibit B</u>:   Fees

<u>Exhibit C</u>:   Support and Maintenance and Service Level Credits

<u>Exhibit D</u>:   Reserved

<u>Exhibit E</u>   Reserved

<u>Exhibit F</u>:   Reserved

<u>Exhibit G</u>:   Hosting Environment

<u>Exhibit H</u>:   Disaster Recovery Plan

The Parties have caused this Agreement to be duly executed. Each Party warrants and represents that its respective signatories whose signatures appear below are on the date of signature authorized to execute this Agreement.

_____
_____

Supplier   ACME, INC.

_____   _____
_____

Authorized Signature   Authorized Signature

_____   _____
_____

Name   Name

_____   _____
_____

Date   Date

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RECITALS

A.   Acme is in the business of developing, manufacturing and selling hardware and software products for use in computer and communications networks as well as associated customer services and support.

B.   Supplier is in the business of providing an application and service for hosting on a Supplier Cloud Platform (as defined below).

C.   Acme desires to contract with Supplier for the performance of Services on the terms and conditions set forth below, including for the benefit of Acme Customers.

AGREEMENT

The Parties agree as follows:

1.   DEFINITIONS

1.1   "Affiliate" means an entity directly or indirectly controlling, controlled by or under common control with a Party, where control means the ownership or control, directly or indirectly, of more than fifty percent (50%) of all of the voting shares; provided that an entity shall be considered an Affiliate only for the time during which such control exists.

1.2   "Acme Content and Data" means (a) any and all of Acme's proprietary and confidential data provided to Supplier in connection with the Services, (b) all proprietary and confidential data or other information received from End Users through Supplier's provision of the Services, (c) any derivatives, improvements or modifications thereof, (d) all materials in any tangible medium of expression that include the information in such materials, that Acme provides to Supplier, (e) any data identified as 'Confidential and/or Proprietary' or that could reasonably be assumed to be confidential and proprietary and (f) and any data, including but not limited to, reports, analytics, and business intelligence that Supplier provides to End User through End User's use of the Hosted Service.

1.3   "Acme Customer" means an entity that has procured services or products from Acme.

1.4   "Cloud Platform" means a computing platform that hosts data from multiple virtual machines that operate using dedicated or shared resources from a pool of computer servers.

1.5   "Data Server" means a computer server that hosts data and/or a software application that a user desires to migrate to and operate on a Cloud Platform.

1.6   "Derivative Work" means a derivative work within the meaning of the Copyright Act of 1976 (as amended) including, without limitation, any modification, revision, port, translation, abridgment, condensation or expansion of the associated content or any form in which the associated content is recast, transferred, transformed or adapted, which, if prepared without the rights granted under this Agreement, would result in copyright infringement.

1.7   "Documentation" means any documentation or materials including, without limitation, reference, user, installation, systems administrator and technical guides/manuals relating to the installation or use of the Software.

1.8   "End User" shall mean any authorized user of the Hosted Service under this Agreement, including Acme and Acme employees, agents and subcontractors. Additionally, an End User may include Acme partners and Acme Customers, as may be set forth herein or in a Transaction Document. .

1.9   "Harmful Code" means any software or other materials that are intentionally designed to (i) disrupt, disable, harm, or impede operation, or (ii) impair operation based on the lapse of time, including but not limited to viruses, worms, time bombs, time locks, drop-dead devices, access codes, security keys, back doors, or trap door devices.

1.10   "Hosted Service" means the hosted software service provided by the Supplier to Acme and/or Acme Customers, as described in Exhibit A.

1.11   "Intellectual Property Rights" means any and all tangible and intangible: (i) copyrights and other rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all Derivative Works thereof;

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(ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

1.12 "Migration" means the deployment of a Data Server image to a Cloud Platform environment.

1.13 "Minimum Service Levels" means the minimums service level guarantees set forth in Section 2 of Exhibit C.

1.14 "Open Source License" means a software license under which Source Code is made available under terms that allow any licensee to copy, create derivative works and distribute the software without fee or cost.

1.15 "Open Source Technology" means any technology provided by Supplier that is or becomes subject to the terms of an Open Source License.

1.16 "Primary Hosting Environment" means all servers, server software, hosting platforms, storage space, telecommunications connectivity and equipment and other hardware, software, technology and other materials provided directly by Supplier and that Supplier is required to, or otherwise does, use, provide or provide access to as part of the routine day-to-day Hosted Service, as set forth in Exhibit H, but specifically excluding the Secondary Hosting Environment.

1.17 "Purchase Order" means a purchase order issued by Acme and accepted by Suppler setting out, without limitation, any additional Services to be provided by Supplier.

1.18 "Secondary Hosting Environment" means all backup/redundant servers, server software, hosting platforms, storage space, telecommunications connectivity and equipment and other hardware, software, technology and other materials Supplier is required to, or otherwise does, use, or provide access to for backup/redundant Hosting Services, as set forth in Exhibit H.

1.19 "Services" means any services that Supplier is to provide under this Agreement, including the Hosted Service, maintenance, training and/or development services.

1.20 "Software" shall mean software that enables the Hosted Service.

1.21 "Source Code" means a fully documented human-readable source code form of the Software, including programmer's notes and materials and documentation, sufficient to allow a reasonably skilled programmer to understand the design, logic, structure, functionality, operation and features and to use, operate, maintain, modify, support and diagnose errors.

1.22 "Subcontractor" means a third party performing Services under an agreement (a "Subcontract") with Supplier.

1.23 "Supplier Content" means the licensed product(s) and data listed in Exhibit A including the Hosted Service, Software, Documentation, editorial and graphical content and design of the Web pages served to End Users, and the results pages, instruction pages, frequently asked questions pages and any Supplier site End User terms and guidelines. Supplier Content excludes any Acme Content and Data.

1.24 "Supplier Personnel" means any current or former employees, consultants, agents, independent contractors, or Subcontractors of Supplier.

1.25 "Transaction Document(s)" means any type of document provided by Supplier that further describes cloud services, including but not limited to a Statement of Work, Quotation, and other such documents, and any type of duly authorized Acme purchase order issued to Supplier in response to, and reflecting, a duly authorized quotation issued by Supplier to Acme.

2.   DUTIES OF SUPPLIER

2.1   Supplier Commitments. During the term described in this Agreement, Supplier shall:

   a)   Complete and comply with the Services described in Exhibit A;

   b)   Commit and use sufficient resources and qualified personnel necessary and appropriate for the performance of any Services described in Exhibit A, including backup/redundancy;

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c) Complete and comply with Acme's cloud service security compliance review at Acme's request, known as of the Effective Date as ~~CSA~~PMO);

d) Ensure that any Supplier Personnel who has or may have access to any information relating to personal data shall have received adequate training regarding the access, use and protection of personal data prior to such access;

e) Ensure that Supplier and its employees required to operate or develop Hosted Service on site at Acme facilities (if at all) comply with Acme's requirements regarding on site confidentiality and network security applicable to third parties;

f) Conduct periodic status meetings, as reasonably requested by Acme;

g) Notify Acme of any factor, occurrence, non-occurrence or event that is likely to cause a material delay in delivery of any Services or that is likely to adversely affect Supplier's ability to meet any obligation under this Agreement; and

h) As it applies to the Services, ensure that any employee, contractor, or Subcontractor will be subject to confidentiality and data privacy requirements that are at least as protective as the terms included in this Agreement.

i) In performing its obligations under this Agreement Supplier will apply the Code of Ethics found at: http://www.Acme.com

j) Except to the extent Supplier is providing: (A) Work Product only; or (B) Services from a Supplier location; or (C) Services in relation to marketing, educational, or a sales related event at a third party site, they have read and comply with the Acme Supplier Environmental Health and Safety Requirements located at: http://www.Acme.com/

3.   SERVICES

3.1   Set-up Services. Supplier will perform any initial development, configuration, integration and installation services as necessary to configure the Primary Hosting Environment and to provide the Hosted Service, as further described in Exhibit A. The Hosted Service shall be available on or within 10 days of the Effective Date. Supplier shall provide Acme and such other persons as Acme may designate with secure, password protected administrative access to the Primary Hosting Environment to allow Acme to transmit, upload and test the Cloud Platform. Should Supplier be unable to implement the Service as accepted by Acme within ten (10) days, or such other time period as otherwise agreed to by the parties, Acme may determine to not go forward with implementation, and in which case, Acme shall have no further financial obligation to Supplier.

3.2   Secondary Hosting Environment Set-up. Supplier is responsible for performing any and all initial and any needed ongoing development, configuration, integration and installation services as necessary to configure and provide the Secondary Hosting Environment so that it: (a) meets all criteria therefor as set forth in Exhibit A; and (b) is available for redundant Hosting Services as set forth in Section [6.1].

3.3   Supplier Services. Supplier shall provide the Hosted Service described in Section 2.0 of Exhibit A to Acme. Supplier, at its own expense, shall provide all data transmission capacity (bandwidth), disk storage, backup/redundancy, server capacity and other hardware and software required to provide the Hosted Service to Acme. Acme, at its own expense, shall provide the Acme Content and Data.   For the avoidance of doubt, all information regarding Acme or its Customers that is accessed by, obtained by, or disclosed to, Supplier in connection with the Services shall constitute Acme "Confidential Information", regardless of any markings or identification as confidential or the like, and shall be subject to the rights and obligations specified in Section 10.

3.4   Maintenance Services. During the term of the Agreement, Supplier will perform the technical support and maintenance services specified in Exhibit C.

3.5   Other Services. Any additional services, whether development, support services, training or maintenance requested by Acme, must be agreed between the Parties.

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4.   LICENSE GRANT

4.1   Supplier hereby grants to Acme a limited, nonexclusive, fee-based, worldwide license, with right to use the Hosted Service for Acme's business operations by any End User for the term of this Agreement and subject to payment of the fees set forth in Exhibit A and/or B.

4.2   Subject to the terms and conditions herein, Acme grants Supplier a limited, non-sublicensable, non-exclusive, non-transferable license to use the Acme Content and Data solely as necessary for Supplier to provide the Hosted Service for Acme's (and Acme Customers') benefit and pursuant to Acme's instructions.   Such license shall expire upon the expiration of this Agreement, following return of or retrieval by Acme or Acme Customers of their stored Content and Data.

5.   REDUNDANCY, BACK-UPS AND DISASTER RECOVERY.

5.1   Redundancy. Supplier shall host a fully current version of the Hosted Service on the Secondary Hosting Environment at a location that is geographically remote from the Primary Hosting Environment location specified in Exhibit H. Supplier shall operate, monitor and maintain the Secondary Hosting Environment so that at all times it is capable of being fully accessible and operational. Supplier shall activate the Secondary Hosting Environment and provide the Hosting Services thereon at the Minimum Service Levels immediately following implementation and as set forth in Exhibit A in accordance with this Agreement.

5.2   Back-Up and Reporting. Supplier shall back up the Cloud Platform, including all content thereon, at the times and with the frequency set forth in Exhibit H, and shall store such back-ups at the locations set forth in such Exhibit. On the last day of each calendar month of the Term, and in addition, within three (3) days of Acme's written request, Supplier shall deliver to Acme the then most current back-ups, or as otherwise set forth in Exhibit A.

5.3   Disaster Recovery. Throughout the Term, Supplier shall:

a)   Maintain a disaster recovery plan that meets or exceeds the criteria set forth in Exhibit I; and

b)   Promptly implement the procedures required under the disaster recovery plan upon the occurrence of a disaster (as defined in such plan).

6.   OWNERSHIP

6.1   Supplier retains ownership of all right, title and interest and the Intellectual Property Rights in the Supplier Content and Acme shall have no Intellectual Property Rights in Supplier Content.

6.2   Acme retains ownership of all right, title and interest and Intellectual Property Rights in all Acme Content and Data, including any derivatives, modification or improvements thereto, and neither Supplier nor any of its employees, agents or subcontractors shall have any Intellectual Property Rights in Acme Content or Data.

6.3   Except as set forth above, neither Party shall be restricted from using general underlying methodologies, techniques or know-how learned or used in the course of performing this Agreement.

7.   COMPENSATION AND SUBMISSION OF INVOICES

7.1   Compensation. All Supplier's pricing and charges are net prices and do not include applicable taxes and duties including, without limitation, sales tax, value added tax, and similar taxes. Acme shall be responsible for paying all applicable taxes and duties including, without limitation, sales tax, value added tax, and similar taxes, provided that Supplier is responsible for all taxes on its income. Acme may withhold from payment to Supplier under this Agreement any income

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taxes of Supplier required to be withheld by Acme under the applicable laws of the United States or any other country. Such amount shall be paid to the appropriate taxing authorities and, if requested, Acme shall provide Supplier with copies of official receipts issued by said taxing authority or such other evidence as is reasonably available to establish that such taxes have been paid.

7.2 <u>No Increases</u>. All charges and amounts other than those set forth on Exhibit A or Exhibit B must be pre-approved and documented in a valid Purchase Order. Charges for the Initial Term of the Agreement are fixed and may not be increased without Acme's prior written consent. Further prices and fees for any Renewal Terms shall remain as set forth in the Initial Term.

7.3 <u>Submission of Invoices</u>. Supplier shall submit invoices as described in <u>Exhibit B</u> or Purchase Order, or both. Each invoice shall cite this Agreement and, if applicable, the Purchase Order number, and shall describe the Services, for which payment is requested. If specified in Exhibit A, Supplier shall not submit any invoice for Services done until Acme has accepted the Services covered by the invoice. Acme shall pay Supplier on net sixty (60) terms. Acme shall have the right to withhold payment for any disputed sums, provided however, that Acme shall pay for undisputed sums in accordance with this Section 7.

7.4 <u>Billing Delays</u>. Except in the case of a delay in issuing invoices owing to a dispute between the Parties, Supplier shall not be entitled to issue invoices to Acme or receive payment for Services performed and accepted more than 12 months previously.

8.   INSPECTION AND AUDIT

8.1 <u>Maintenance of Records</u>. Supplier shall maintain accounting records and documentation to justify all charges billed to Acme. Acme shall have the right to examine and audit these records for five (5) years or a longer period of time as may be required by law or government requirement after delivery of an invoice. Acme will exercise this audit right no more than once annually and during normal business hours and with two weeks' prior notice to Supplier. Such audit will be conducted in a manner so as to minimize interference with Supplier's business.

8.2 <u>Overcharges</u>. If an audit reveals any overcharges, Supplier will promptly credit the overcharge to Acme's account or, on demand, pay Acme directly. Acme retains the right to seek any other available remedies resulting from errors or overcharges identified by the audit.

8.3 <u>Audit and Inspection of Acme Information</u>. In addition to the financial audit rights described, Acme shall have the right, with reasonable advance notice to Supplier and during normal business hours, to review and audit Supplier's compliance with the contractual obligations under the Agreement, which includes the use and security of any of Acme information including Acme Content and Data and personal data, and Supplier's books or records as they relate to Acme information including Acme Content and Data and personal data and the performance of Services by Supplier. Acme understands and agrees that any audit will be performed at a time and place mutually agreeable to Acme and Supplier and that the audit will be performed in a manner that reasonable minimizes the interference with Supplier's normal business activities.

9.   CONFIDENTIAL INFORMATION

9.1 In this Agreement, "Confidential Information" means the terms and conditions of this Agreement, any relevant SOW or Purchase Order, the existence of discussions between the Parties, any and all documents, software, reports, data, records, forms and other materials obtained by one party (the "Receiving Party") from the other party (the "Disclosing Party") , or at the request or direction of the Disclosing Party in the course of performing the Services: (i) that have been marked as confidential; (ii) whose confidential nature has been made known by the Disclosing Party to the Receiving Party; or (iii) that due to their character and nature, a reasonable person under like circumstances would treat as confidential.

9.2 Each Party shall obtain the other's consent prior to any publication, presentation, public announcement or press release concerning the existence or terms and conditions of this Agreement. The Receiving Party may use the Confidential Information solely for the purpose of furtherance of the business relationship between the parties, as provided in this Agreement and shall not disclose the Confidential Information to any third party, other than to Affiliates and to employees of the Receiving Party and its Affiliates who have a need to have access to and knowledge of the Confidential Information, solely for the purpose authorized above. Each party shall take appropriate measures by instruction and agreement prior to disclosure to such employees to assure against unauthorized use or disclosure.

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9.3 The Receiving Party shall have no obligation with respect to information which (i) was rightfully in possession of or known to the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party; (ii) is, or subsequently becomes, legally and publicly available without breach of this Agreement; (iii) is rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality; (iv) is developed by or for the Receiving Party without use of the Confidential Information and such independent development can be shown by documentary evidence; (v) becomes available to the Receiving Party by wholly lawful inspection or analysis of products offered for sale; (vi) is transmitted by a party after receiving written notification from the other party that it does not desire to receive any further Confidential Information; (vii) is disclosed by the Receiving Party pursuant to a valid order issued by a court or government agency, provided that the Receiving Party provides (a) prior written notice to the Disclosing Party of such obligation and (b) the opportunity to oppose such disclosure. Upon written demand by the Disclosing Party, the Receiving Party shall: (i) cease using the Confidential Information, (ii) return the Confidential Information and all copies, notes or extracts thereof to the Disclosing Party within seven (7) days of receipt of demand, and (iii) upon request of the Disclosing Party, certify in writing that the Receiving Party has complied with the obligations set forth in this paragraph.

9.4 Each party shall retain all right, title and interest to such party's Confidential Information. No license under any trademark, patent or copyright, or application for same which are now or thereafter may be obtained by such party is either granted or implied by the conveying of Confidential Information. The Receiving Party shall not reverse-engineer, decompile, or disassemble any software disclosed to it and shall not remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information it obtains from the Disclosing Party. WITHOUT PREJUDICE TO THE EXPRESS WARRANTIES PROVIDED ELSEWHERE IN THIS AGREEMENT, CONFIDENTIAL INFORMATION IS PROVIDED "AS IS" WITH ALL FAULTS. IN NO EVENT, SHALL THE DISCLOSING PARTY BE LIABLE FOR THE ACCURACY OR COMPLETENESS OF THE CONFIDENTIAL INFORMATION. None of the Confidential Information disclosed by the parties constitutes any representation, warranty, assurance, guarantee or inducement by either party to the other with respect to the infringement of trademarks, patents, copyrights, any right of privacy, or any rights of third persons.

9.5 Existing NDA. If a Non Disclosure Agreement ("NDA") covering the subject matter of this Agreement (including any and all SOWs) exists between Supplier and Acme, that NDA shall apply in place of the obligations in Sections 9.1 to 9.5.

9.6 Retention of Acme Records. Supplier shall maintain all Acme owned information or information managed for Acme under this Agreement or any statement of work to support Acme's requirement for retention, retrieval and/or reproduction. Upon Acme's written request, Supplier shall provide such material to Acme in the manner requested. At least 30 days prior to disposing of any Acme owned information or information managed for Acme under this Agreement, Supplier shall notify Acme in writing of the impending disposition. Supplier shall request that Acme either approve the disposition or require that the materials and information are promptly returned to Acme. In the event Acme requires the return of said materials and information, Supplier shall return materials and information within 30 days of notification.

10.   REPRESENTATIONS AND WARRANTIES

10.1 Supplier Warranties. Supplier represents and warrants that:

a) It has the full power to enter into this Agreement and to carry out its obligations under this Agreement.

b) It has the right to grant the rights and licenses granted to Acme under this Agreement;

c) All Services provided by Supplier hereunder, including without limitation, the Software, is either owned or properly licensed by Supplier or is in the public domain and the use, manufacture, license, copying or distribution thereof by Acme pursuant to the terms of this Agreement does not and will not infringe any Intellectual Property Rights or other proprietary rights of any third party;

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d)   Supplier will not disclose to Acme, bring onto Acme's premises, or induce Acme to use any confidential or proprietary information that belongs to anyone other than Acme or Supplier;

e)   Software supplied or used by Supplier contains no Harmful Code;

f)   Software supplied or used by Supplier either contains no Open Source Technology or complies with all applicable Open Source Licenses.

g)   Supplier shall maintain an organization with suitably qualified and competent personnel and be prepared to continuously and in a professional way carry out the Services.

h)   If Supplier has access to Acme Content and Data Supplier will fully comply with the Master Data Protection Agreement at: http://www.Acme.com

i)   Supplier is not a Party to, and is not bound or affected by or subject to, any instrument, agreement, charter or by-law provision, law, rule, regulation, judgment or order which would be contravened or breached as a result of the execution of this Agreement or consummation of the transactions contemplated by this Agreement.

j)   The Hosted Service will conform to Supplier's published, written specifications (the "Specifications") for such service and all other Services will conform to any written specifications agreed to between Acme and Supplier, including, without limitation, those set forth in Exhibit A and Exhibit C.

k)   Supplier will perform all Services in a professional and workmanlike manner with personnel duly qualified, trained and experienced in providing the Services assigned to them; and

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l)   Supplier maintains backup/redundant copies of Acme Content and Data at a secure and separate location.

10.2   <u>Acme Warranties</u>.   Acme hereby warrants and represents to Supplier that Acme has the full power to enter into this Agreement and to carry out its obligations under this Agreement.

10.3   TO THE EXTENT ALLOWED BY APPLICABLE LAW, THE WARRANTIES SET OUT ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND NO OTHER WARRANTIES ARE MADE, EITHER EXPRESSED, STATUTORY, IMPLIED OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11.   COMPLIANCE WITH LAWS

Supplier represents and warrants that it will comply with all applicable local and national laws and regulations pertaining to its performance of its obligations under this Agreement. In particular and without limitation, Supplier shall not act in any fashion or take any action that will render Acme liable for a violation of any applicable anti-bribery legislation (including without limitation, the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010), which prohibits the offering, giving or promising to offer or give, or receiving, directly or indirectly, money or anything of value to any third party to assist it them or Acme in retaining or obtaining business or in performing the Work. Without limiting the foregoing, to the extent that Supplier is a US federal contractor or covered subcontractor as contemplated in accordance with the applicable laws and regulations, then Supplier agrees that this Agreement will be subject to the requirements of 41 CFR 60-1.4 and 29 CFR part 471, Appendix A to Subpart A, and the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which are incorporated herein by reference. **The latter two regulations prohibit discrimination against qualified individuals on the basis of protected veteran status and disability and require affirmative action to employ and advance in employment protected veterans and qualified individuals with disabilities.**   Supplier's failure to comply with this provision shall constitute a material breach of this Agreement.

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12. ASSIGNMENT AND SUBCONTRACTING.

1.1. <u>No Assignment</u>. Supplier may not assign any of its rights or delegate any of its obligations under this Agreement without Acme's prior written consent. Any attempted assignment or delegation without Acme's prior written consent, which Acme will not unreasonably withhold, will be voidable by Acme.

1.2. <u>Subcontracting</u>. Supplier may not subcontract any of its rights or obligations under this Agreement without Acme's prior written consent. If Acme consents to the use of a subcontractor, Supplier will comply with the following conditions:

   a). Supplier guarantees and shall remain liable for the performance of all subcontracted obligations.

   b). Supplier makes all payments to its subcontractors. If Supplier fails to pay subcontractor for work performed, Acme shall have the right, but not the obligation, to pay the subcontractor and offset any amounts due to Supplier with amounts paid to subcontractor.

1.3. <u>Third Party Rights</u>. No person who is not a party to this Agreement shall be entitled to enforce or take the benefit of any of its terms

13. INDEMNIFICATION

13.1 <u>Indemnification by Supplier</u>. Supplier shall defend, indemnify and hold Acme harmless from and against any and all claims, losses, damages, liabilities, settlement, costs, or expenses (including legal expenses and the expenses of other professionals) (collectively "Claims") as incurred, arising out of or in connection with (i) any infringement (or claim of infringement) of a third party's Intellectual Property Rights or any other rights; or (ii) any claim by any employee of Supplier or their representative arising directly or indirectly from any act, fault or omission (or any alleged act, fault or omission) of the Supplier in respect of such employee at any time; (iii) allege any breach of license governing Open Source Technology or Contamination resulting from the Open Source Technology, as distributed in accordance with the licenses provided in Section 5; or (iv) any breach by Supplier of Section 9 (Confidential Information), or any breach of or as otherwise set forth in Section 19 Data Use and Protection. For purposes of this Agreement, a claim brought against any Acme Customer that is tendered to Acme for defense/settlement shall constitute a claim against Acme, and both (a) a claim brought against Acme Customer that is tendered to Acme for indemnity, and (b) a claim brought against Acme by Acme Customer, shall each constitute a "third party claim" subject to indemnification by Supplier.

13.2 <u>Indemnification Procedure</u>. Acme will provide Supplier with prompt written notice of any third party Claim, permit Supplier to control the defense, settlement, adjustment, or compromise of any Claim and provide reasonable assistance to Supplier, at Supplier's expense, in the defense of the Claim. Acme may employ counsel at its own expense to assist it with respect to any Claim. Acme will have no authority to settle any Claim on the indemnifying Party's behalf.

13.3 <u>Supplier's Efforts; Discovery Requests</u>. In addition to its obligations set forth in Section 13.1 above, if the reproduction, use, or distribution of the Software or Services is enjoined or becomes the subject of a claim of infringement, Supplier shall (i) obtain any licenses necessary to permit Acme to continue to use the Software or Services as applicable; (ii) replace or modify the Software or Services as applicable to the extent necessary to permit Acme to continue to use of the Software or Services; or if (i) and (ii) are not commercially reasonable, then (iii) promptly refund to Acme any amount paid in advance for any Software or Services not yet provided for which a third party enjoins or interferes with Acme's use of the Software or Services. Further, in the event that Acme or a Acme Customer becomes subject to a discovery request or demand in which Acme Content and Data must be accessed with the assistance of Supplier, Supplier shall cooperate with such request in an orderly and prompt fashion and at no additional charge to Acme or Acme Customer. Notwithstanding any of the foregoing, Supplier shall have no obligation under Section 13.1 with respect to any claim to the extent that the alleged infringement is based on or arises out of: (i) any third party hardware, software, data or other materials contained in, provided with, or otherwise used with the Software or any Services; (ii) modifications or additions to the Software or any Services not made by Supplier; or (iii) use of the Software or any Services other than in accordance with this Agreement and the Documentation.

13.4 <u>No Limitation of Remedy</u>. Nothing in this Section shall limit any other remedy of the Parties.

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14. CONSEQUENTIAL DAMAGES WAIVER; LIABILITY CAP

14.1 EXCEPT FOR EACH PARTY'S LIABILITY UNDER CONFIDENTIALITY (SECTION 9) AND MASTER DATA PROTECTION AGREEMENT (SECTION 10h), INDEMNIFICATION (SECTION 13) AND NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, NEITHER PARTY WILL BE LIABLE TO THE OTHER WITH RESPECT TO THIS AGREEMENT, THE HOSTED SERVICE, ANY WORK OR THE USE OR PROVISION THEREOF UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR EXEMPLARY DAMAGES, OR DAMAGES FOR LOSS OF BUSINESS, PROFITS, BUSINESS INTERRUPTIONS, , EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES (PROVIDED, HOWEVER, THAT FOR PURPOSES OF SECTION 13, ANY SUCH DAMAGES AN INDEMNITEE IS REQUIRED TO PAY TO A THIRD PARTY SHALL BE CONSIDERED DIRECT DAMAGES OF SUCH INDEMNITEE).

14.2 NOTHING IN THIS AGREEMENT SHALL LIMIT EITHER PARTY'S (1) LIABILITY FOR PERSONAL INJURY OR DEATH CAUSED BY ITS NEGLIGENCE, (2) LIABILITY IN THE TORT OF DECEIT, OR (3) LIABILITY TO THE EXTENT THAT IT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

15. TERM AND TERMINATION

15.1 Term.

    a) This Agreement shall commence on the Effective Date and will continue for one (1) year from the Effective Date unless earlier terminated (the "Initial Term"). Acme may at its option, renew this Agreement for up three (3) additional one (1) year terms, (each being a "Renewal Term").

    b) Notwithstanding the foregoing, this Agreement will remain in effect with respect to any Services that is not completed and accepted as the expiration of the applicable Term.

15.2 Termination for Convenience.

    Termination for Convenience. Acme may terminate this Agreement or any Transaction Document, for no reason or for any reason, upon thirty (30) days written notice to Supplier. Upon receipt of notice of such termination, Supplier shall inform Acme of the extent to which it has completed performance as of the date of the notice, and Supplier will collect and deliver to Acme all Acme Content and Data. Acme will pay Supplier for all Services acceptably performed through the effective date of the termination, provided that Acme will not be obligated to pay any more than the payment that would have become due had Supplier completed and Acme had accepted the Services. Acme will have no further payment obligation in connection with any termination under this Section 16.2.

15.3 Termination for Cause.

    a) Either Party may terminate this Agreement or any Transaction Document, in whole or in part for cause immediately upon the occurrence of and in accordance with the following:

    b) *Insolvency Event.* Either Party may terminate this Agreement by delivering written notice to the other Party upon the occurrence of any of the following events: (i) a receiver is appointed for either Party or its property; (ii) either makes a general assignment for the benefit of its creditors; (iii) either Party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, if such proceedings are not dismissed within sixty (60) days; or (iv) either Party is liquidating, dissolving, or ceasing to do business in the ordinary course.

    c) *Default.* Either Party may terminate this Agreement effective upon written notice to the other for any material breach not cured within thirty (30) days of receipt of notice of the breach. Acme shall have no further payment obligation to Supplier if Acme terminates the Agreement under this Section 16.3.

15.4 Consequences of Termination. In the event of termination or expiration of this Agreement in whole or part:

    a) Supplier will, at no additional charge to Acme, make Acme Content and Data completely accessible and return any and all Acme Content and Data Acme's confidential information in Supplier's or its subcontractors, agent's possession to Acme or its third party nominee, within ten (10) business days. Upon returning the Acme Content and Data to Acme, Supplier, its subcontractors and agents shall destroy all such Acme Content and Data,

Acme confidential information, and Supplier shall provide written verification of such destruction to Acme signed by an authorized representative of Supplier.

b)   Termination of this Agreement for any reason under this Agreement will not affect (i) any liabilities or obligations of either Party arising before such termination or out of the events causing such termination or (ii) any damages or other remedies to which a Party may be entitled under this Agreement, at law or in equity arising from any breaches of such liabilities or obligations.

c)   Upon termination, Supplier agrees that, at the request of Acme, Supplier will at no additional cost to Acme, cooperate with Acme in (i) the transition of the Services to Acme or to another supplier of Acme's choice, or (ii) the conclusion of the business in an orderly fashion.

d)   The amounts payable to Supplier in the event of a termination will serve as full and final compensation to Supplier for all Services provided hereunder. This Section does not waive, prejudice, or diminish any rights that Acme may have, or damages to which it may be entitled, at law or in equity for any unlawful termination or other breach of this Agreement by Supplier.

e)   Sections 1 (Definitions), 5 (Redundancy, Back-Ups and Disaster Recovery), 6 (Ownership), 7 (Compensation and Submission of Invoices) , 8 (Inspection and Audit), 9 (Confidential Information), 10 (Representations and Warranties), 11 (Compliance With Laws), 12 (Assignment and Subcontracting), 13 (Indemnification), 14 (Consequential Damages Waiver/Liability Cap), 15 (Dispute Resolution), 16 (Term and Termination), 17 (Insurance) and 18 (No Partnership or Employee Relationship), Section 19 (Data Use and Protection) shall survive termination or expiration of this Agreement. In addition, Acme's license rights under Section 4 (License Grant) shall survive for a period of six (6) months following the termination or expiration of this Agreement.

16.   INSURANCE

16.1   General Insurance Provisions. Supplier shall, at its own expense, at all times during the term of this Agreement and as otherwise explained below provide and maintain in effect those insurance policies and minimum limits of coverage as designated below, and any other insurance required by law in any state where Supplier's personnel provide Services under this Agreement, with insurance companies with an A.M. Best's Insurance Rating of A:VIII or better or as otherwise acceptable to Acme, and will comply with all those requirements as stated herein. In no way do these minimum insurance requirements limit the liability assumed elsewhere in this Agreement, including but not limited to Supplier's defense and indemnity obligations.

16.2   Worker's Compensation and Employer's Liability Insurance. Workers' Compensation insurance shall be maintained as required by any applicable law or regulation and in accordance with the laws of the nation, state, territory or province having jurisdiction over Supplier's employees. Employer's Liability insurance shall be maintained in amounts not less than $1,000,000 USD. If there is any exposure of injury to Supplier's employees under the US Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims. If Supplier has no employees, in lieu of the above requirements, Supplier will provide proof of personal medical coverage for every person performing services under this Agreement.

16.3   Commercial General Liability Insurance. Supplier shall carry Commercial General Liability insurance covering all operations by or on behalf of Supplier arising out of or connected with this Agreement providing insurance for bodily injury, property damage, personal injury and advertising injury, as those terms are defined by Commercial General Liability insurance policies, with limits of not less than $1,000,000 USD per occurrence or per claim and $2,000,000 USD in the annual aggregate.

Such insurance must provide for contractual liability coverage (for bodily injury, property damage, personal injury and advertising injury), cross liability coverage, and products/completed operations coverage. The "Your Work" exclusion in such insurance must except damage caused by work done by a Subcontractor of the insured.

Acme, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, employees, agents and invitees shall be included as Additional Insureds under the Commercial

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General Liability coverage required under this Agreement, but only to the extent of liabilities falling within Supplier's indemnity obligations pursuant to this Agreement. If Supplier maintains such insurance on a claims-made basis, Supplier shall continue to maintain such Commercial General Liability insurance for a minimum of three years following completion and acceptance of the Services by Acme.

16.4   Automobile Liability Insurance. Supplier shall carry Automobile Liability insurance, including coverage for bodily injury and property damage, for all vehicles used in the performance of Supplier's Services under this Agreement, including but not limited to all owned, hired (or rented) and non-owned vehicles. The limits of liability shall not be less than $1,000,000 USD combined single limit for each accident.

16.5   Umbrella Liability And/Or Excess Liability Insurance. Supplier shall carry Umbrella and/or Excess Liability insurance with limits of not less than $1,000,000 USD per occurrence or per claim and $1,000,000 USD general annual aggregate in excess of the limits provided by the Supplier's Employer's Liability, Commercial General Liability and Automobile Liability insurance. The coverage terms of the Umbrella/Excess insurance must be at least as broad as the underlying Employer's Liability, Commercial General Liability and Automobile Liability insurance. The Umbrella Liability and/or Excess Liability insurance shall provide contractual liability coverage.

If Supplier maintains the insurance on a claims-made basis, Supplier shall continue to maintain the Umbrella Liability and/or Excess Liability insurance for a minimum of three (3) years following completion and acceptance of the Services by Acme.

Acme, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, employees, agents, and invitees shall be included as Additional Insureds on the Umbrella Liability and/or Excess Liability coverage required to be maintained by Supplier under this Agreement, but only to the extent of liabilities falling within Supplier's indemnity obligations pursuant to this Agreement.

16.6   Professional Liability (Errors and Omissions) Insurance. Supplier shall carry insurance for professional liability with limits of not less than $3,000,000 per occurrence or per claim and $3,000,000 in the annual aggregate. Such insurance shall provide contractual liability coverage. If Supplier carries the Professional Liability insurance required under this Agreement on a claims-made basis, the Supplier shall continue to maintain such insurance for three (3) years following completion and acceptance of the Services by Acme.

16.7 Network Security Liability and Privacy Insurance. Supplier shall carry insurance for network security liability and privacy with limits of not less than $3,000,000 per occurrence or wrongful act or per claim and $3,000,000 in the annual aggregate. Such insurance shall provide contractual liability coverage. Such insurance shall include coverage for: (a) liability arising from Acme Data and Personal Data being lost, stolen, compromised or used and/or something happening to such information that triggers a breach notice law or similar law regarding such information, and including but not limited to privacy notification costs, and (b) liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer-related property and the data, software and programs stored thereon. If Supplier carries the Network Security Liability and Privacy insurance required under this Agreement on a claims-made basis, the Supplier shall continue to maintain such insurance for three (3) years following completion and acceptance of the Services by Acme. Supplier may maintain this Network Security Liability and Privacy coverage in the same insurance policy that Supplier maintains pursuant to 17.6 above, provided that the limits of such insurance policy are not less than $5,000,000 per occurrence or wrongful act or per claim and $5,000,000 in the annual aggregate.

16.8   Certificates of Insurance. At the time this Agreement is executed, or within a reasonable time thereafter, and within a reasonable time after coverage is renewed or replaced, Supplier shall provide Acme with certificates of insurance demonstrating the maintenance of the required coverage.   If any of the required insurance is cancelled or non-renewed, Supplier shall replace such insurance so that there is no lapse in coverage, and Supplier shall provide Acme with a revised certificate of insurance evidencing same. Any acceptance of insurance certificates by Acme that do not comply with the requirements above, or Acme's failure to obtain certificates, shall not constitute a waiver of the requirements contained herein and shall not limit or relieve

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Supplier of the duties and responsibilities with respect to maintaining insurance assumed by it under this Agreement.

16.9 <u>Primary and Non-Contributory; Waiver of Subrogation.</u> The policy(ies) shall provide that Supplier's insurance shall be primary to and noncontributory with any and all other insurance maintained by or otherwise afforded to Acme ~~Systems~~, Inc., its subsidiaries and Affiliates, and their respective officers, directors, shareholders, employees and agents, but only to the extent of liabilities falling within the indemnity obligations of Supplier pursuant to the terms of this Agreement. Except where prohibited by law and except with respect to the required Errors and Omissions insurance, Supplier and its respective insurers waive all rights of recovery or subrogation against Acme ~~Systems~~, Inc., its subsidiaries and Affiliates, and their respective officers, directors, shareholders employees, agents, and insurers, but only to the extent of liabilities falling within the indemnity obligations of Supplier pursuant to the terms of this Agreement.

16.10 <u>Acme-Owned Property.</u> Supplier shall obtain insurance or shall reimburse Acme for loss or damage to any Acme-owned property and Acme-provided third party products in the care, custody, or control of Supplier, for all losses including, but not limited to theft, loss, misappropriation or destruction caused by Supplier, its employees, agents, or other representatives, whether intentional or through negligence.

16.11 <u>Subcontractors.</u> In the event Supplier utilizes the services of Subcontractors to perform the Services contemplated hereunder, Supplier shall require from or provide for all Subcontractors (regardless of tier) the same minimum insurance requirements detailed above. Acme reserves the right to request copies of Subcontractor's certificates of insurance from Supplier when deemed necessary.

17. NO PARTNERSHIP OR EMPLOYEE RELATIONSHIP

17.1 <u>Independent Contractors.</u> Nothing in this Agreement is intended, or shall be construed, to create a partnership, joint venture, or employer-employee relationship between the Parties. Supplier has no authority to act on behalf of or to enter into any contract, incur any liability, or make any representation on behalf of Acme. Without limiting the foregoing, Supplier will not make any representations or warranties to Acme Customers regarding the Services, Acme or any Acme Customer products or services.

17.2 <u>Performance of Services.</u> Supplier will secure all licenses and permits, and supply all tools and equipment, necessary to perform the Services.

17.3 <u>No Employee Relationship.</u> Supplier will not be entitled to any of the benefits that Acme may make available to its employees including, but not limited to, group health or life insurance, stock options, profit sharing, or retirement benefits. Supplier is solely responsible for all taxes and withholdings, severance and redundancy pay, benefits (including, without limitation, vacation, sick leave, holidays, pension or profit sharing contributions, stock options, etc.), and other similar obligations, whether statutory or otherwise, with respect to the performance of all its work and receipt of fees under this Agreement.

17.4 <u>Removal of Supplier Employees.</u> At Acme's direction and for good cause, Supplier will remove any Supplier Personnel or Subcontractor from performance of Services.

18. MISCELLANEOUS

18.1 <u>Compliance</u>. Acme acknowledges that materials Supplier supplies under the Agreement may be subject to export or import controls under the laws and regulations of the United States. Acme will comply with such laws and regulations, and, agrees not to knowingly export, re-export, import or re-import, or transfer Supplier materials without first obtaining all required U.S. Government approvals or licenses. Acme and Supplier agree to provide the other information and assistance as each may reasonably require in connection with securing such approvals or licenses, and to take timely action to obtain all required support documents.

18.2 <u>Records.</u> Supplier agrees to maintain a record of exports, re-exports, and transfers of any Acme materials for five (5) years or a longer period of time as may be required by law or government requirement and to forward within that period any required records to Acme or, at Acme's

request, the U.S. Government. Supplier agrees to permit Acme or the U.S. Government to audits as required under appropriate regulations to ensure compliance with this provision.

18.3 <u>No Publication</u>.   Supplier shall obtain Acme's written consent prior to any publication, presentation, public announcement, or press release concerning its relationship as a supplier to Acme.

18.4 <u>Legal Fees and Costs</u>. The prevailing Party in any legal action to enforce or interpret this Agreement shall be entitled to recover reasonable legal fees and costs (including the reasonable expenses of expert witnesses and other professionals).

18.5 Any notice to be given under this Agreement will be in writing and addressed to the Party at the address stated below. Notices will be deemed given and effective (i) if personally delivered, upon delivery, (ii) if sent by an overnight service with tracking capabilities, upon receipt; (iii) if sent by fax or electronic mail, at such time as the Party which sent the notice receives confirmation of receipt by the applicable method of transmittal, or (iv) if sent by certified or registered mail, within five (5) days of deposit in the mail.

To Acme:	**To Supplier:**
Acme, Inc. **123 East Beach Drive.** **Bald Head Island, NC 28461** **Attn: Sr. Vice President and General Counsel**	**Attn:**

18.6 A Party's decision not to insist on strict performance of any requirement of this Agreement shall not operate or be construed to waive any future omission or breach, or any other provision of this Agreement.

18.7 <u>Controlling Law and Jurisdiction</u>. The validity, interpretation, and performance of this Agreement will be controlled by and construed under the laws of the State of California and of the United States without regard to the conflicts of laws provisions thereof. Notwithstanding the foregoing, either Party may seek interim or temporary injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such Party's intellectual property, confidentiality or proprietary rights under this Agreement as such a breach may cause the non-breaching party irreparable damage, for which the award of damages may not be adequate compensation. The Parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement

18.8 If any court of competent jurisdiction holds that any provision of this Agreement is illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of this Agreement will not be affected or impaired, and all remaining terms of this Agreement remain in full force and effect, provided that this provision shall not be applied to defeat the intent of the Parties.

18.9 This Agreement is the complete agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous oral or written communications. This Agreement may only be modified by a written agreement executed by both parties. In the event of a conflict between the provisions of this Agreement and provisions set forth in a hyperlink or SOW, the provisions of this Agreement shall govern. In the event of a conflict between provisions of a SOW and provisions set forth in a hyperlink incorporated by reference into this Agreement, the provisions of the hyperlink shall govern. .For the avoidance of doubt, terms contained in any Purchase Order acknowledgement or invoice will be of no effect, even if such acknowledgement or invoice provides that Supplier's acceptance of the Purchase Order is conditioned on Acme's agreement to the proposed terms contained in such acknowledgement or invoice.

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EXHIBIT A

DESCRIPTION OF HOSTED SERVICE, SOFTWARE AND SPECIFICATIONS

1.0 **SETUP SERVICES**
[includes any transition and migration services].

2.0 DESCRIPTION OF THE SUPPLIER HOSTED SERVICE

At a minimum includes the following:
 	
1. Description of services
2. Service locations
3. Equipment
4. Software
5. Architecture
6. Reports
7. Key personnel
8. Form of Change Order
    a. Add/remove customers
    b. Change SW/HW/locations
9. SLAs
10. Business Resumption Plan

3.0 MAINTENANCE AND SUPPORT
Supplier will perform the support and maintenance services described in Exhibit C at the price set forth in Exhibit B.

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EXHIBIT B

FEES

1.0 GENERAL
Supplier shall issue invoices to Customer for all fees due under this Agreement.

2.0 SETUP SERVICE FEE
Setup Service Fee:

3.0 SUPPLIER FEE
Supplier Fee:

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EXHIBIT C

SUPPORT AND MAINTENANCE AND SERVICE LEVEL CRITERIA

1.0 **General:**

Supplier warrants to Acme that it will provide the Services according to the service guarantees in this Service Level Agreement ("SLA") for the applicable Hosting Services. An Outage Event Credit will be granted for any period of time during which the Hosting Services are not available to Acme. In the event of a service failure affecting one or more attached servers or the availability of the Hosting Services, an Outage Event Credit will be granted.

2.0 **Service Level Guarantees**

NETWORK PERFORMANCE

SYSTEM AVAILABILITY: 99.999%

System Availability is defined as by the measurement criteria are listed below, which data shall be provided by Supplier in a discrete monthly report, meaning that the data will be recorded from scratch each month:

- System Availability = Total Hours in Period, Hours Available excluding scheduled maintenance, Hrs Available/Total Hrs (All data reported)

BANDWIDTH FROM ASP FACILITY TO DEPLOYMENT LOCATION	

SYSTEM PERFORMANCE

PERFORMANCE	99.9% average uptime per year

APPLICATION PERFORMANCE

GUARANTEED NUMBER OF CONCURRENT USERS	

3.0 Response Time

Supplier shall exercise commercially reasonable efforts to correct any Error reported by Acme in accordance with the priority level reasonably assigned to such Error by Supplier. The following definitions will apply to such prioritization:

- "Priority 1 Error" means an Error which (i) renders the Hosting Service inoperative or intermittently operative; or (ii) substantially degrades performance; or (iii) causes any feature to be unavailable or substantially impaired; or (iv) causes a complete failure of the Hosting Service.
- "Priority 2 Error" means an Error which degrades the performance of Hosting Service or restricts Acme's use of the Hosting Service.
- "Priority 3 Error" means an Error which causes only a minor impact on the Acme's use of Hosting Service.

PRIORITY 1 PROBLEMS:	MEAN TIME TO RESPONSE		MEAN TIME TO REPAIR	
PRIORITY 2	MEAN TIME TO		MEAN TIME	

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PROBLEMS:	RESPONSE		TO REPAIR	
PRIORITY 3 PROBLEMS	MEAN TIME TO RESPONSE		MEAN TIME TO REPAIR	
PRIORITY 4	MEAN TIME TO RESPONSE			

ESCALATION PATH FOR EMERGENCY OR OUTAGE

Order	User ID/ Duty Alias	Contact Type	Phone/Pager (Duty Pager)	Elapsed Time to Escalate
1				
2				
3				

4.0   Monitoring

Supplier shall monitor on a 24x7x365 basis, Acme's applications, servers and arrays for correct operation, security, capacity and performance.

5.0   Chronic Outages

If Acme experiences chronic outages, Supplier shall promptly take corrective action to remedy such breach or Acme shall have the right to terminate the Agreement and receive an immediate and full refund for the pre-paid and unused Fees paid under this Agreement during the time that services are provided in accordance with this Agreement. In establishing appropriate corrective action, Supplier shall promptly isolate, identify and develop a workaround and corrective action for any material performance or functional deviations from the Hosting Service or Supplier Content specifications. Supplier will prepare an action plan that specifies the activities required to correct any deviation and the order and schedule of corrective actions required, and that identifies the party responsible for performing each such corrective action. Supplier will execute all activities assigned to it in the plan and will monitor, and provide Acme regular reports of, the progress made in executing the plan and correcting the deviation until each such deviation is corrected to Acme's satisfaction. A chronic outage will include any outage for a period longer than 24 hours and any period where the Maximum Total Credit is reach for any two (2) billing periods during the term of this Agreement.

6.0   Credits

An Outage Event is an event where stated availability service level commitment is not met for the Hosting Service including, but not limited to, Acme or Acme Customer Content and Data is not accessible by Acme or the Acme Customer. Supplier will provide one (1) day of credit for each single outage event with duration shorter than or equal to four (4) hours or each series of intermittent outage events occurring within the same four-hour period. If an outage event or series of intermittent outage events continues for longer than four (4) hours, Supplier will provide one (1) additional day of credit for each additional hour, up to the amount of the Maximum Outage Event Credit for the Hosting Service. The actual credit amount will be the daily pro-rated portion of the invoiced amount for the Hosting Service based on a 30-day billing period. Acme will not be eligible to receive multiple Outage Event Credits for the same service component or invoice line item as a result of multiple service failures or outage events occurring during the same period of time. The Maximum Outage Event Credit means the total Outage Event Credits that the Customer may receive in a single billing period. The Maximum Outage Event Credit for any given line item on a Customer's invoice will not exceed a total of 10 days pro rata credit in a single billing period.

Credit will not be given for events resulting from conduct of the Acme including (i) the negligence of Acme, (ii) a failure or malfunction resulting from scripts, applications, equipment, or services provided by Acme, (iii) outages initiated by Supplier at the request or direction of the Acme for maintenance, back up, or other purposes, (iv) outages occurring as a result of any actions taken by Supplier at the

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request or direction of Acme.

7.0   Backup & Recovery

If the Acme requires restoration of Acme Content and Data including a dataset, Supplier will deliver a recovery from backup within a guaranteed time in accordance with the Response Time in Section 3.

8.0   Security Shut-Downs

Credit will not be given for any events resulting from an interruption or shut down of the Hosting Services due to circumstances reasonably believed by Supplier to be a significant threat to the normal operation of the Hosting Services, the Supplier facility, or access to or integrity of Acme data (e.g., hacker or virus attack). In the event of such an interruption or shutdown, Supplier will return Hosting Services to normal operation as soon as reasonably possible. Supplier shall communicate the reason for such interruption or shutdown via email to the Acme contact.

9.0 **Security.** [Security/encryption policies to be provided by Supplier.]

Sample

Exhibit G

Hosting Environment

Primary Hosting Environment
At a minimum:

1. Require login authentication
2. Can handle and do high encryption (at least 128-bit) of data transfers, preferably end to end, and at least for data that is being transferred over the Internet.
3. Lossless data compression
4. Automated, scheduled backups as required by the Acme Intercloud team.
5. Fast backup (snapshots) after full online backup, with 10 – 30 historical versions of a file retained.
6. Versions of the data with the ability of Acme to retrieve historical versions of files from different backups.
7. Adequate bandwidth at both primary and secondary sites
8. 24 x 7 technical support
9. Backed up data set validation, checking to see if backed up data matches the original data.
10. Data such as financial, Acme's registered and unregistered Intellectual property and any data in the healthcare or of a personal nature cannot be viewed without additional safeguards or restrictions.
11. One or more additional offsite storage site(s) that provide(s) replication, enabling data failover.

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<u>Disaster Recovery Plan</u>

- Supplier or Acme shall declare a disaster in the event of a catastrophic incident in the primary hosting facility from which the End User Content cannot be recovered. Upon such declaration, Supplier will commence on execution of its Disaster Recovery Plan Level (DR Plan);
- The recovery facility will be in a geographically and physically diverse location;
- Supplier shall use best efforts to ensure that site functionality can be restored within 48 hours of the declaration of Disaster ("RTO").
- Supplier will coordinate testing for Acme testing and validation upon Acme's written request.
- Upon request, Supplier will make best efforts to retrieve the data in Acme usable format and make available to Acme within ten (10) calendar days.