

## USHUR, INC.

### MASTER SOFTWARE AS A SERVICE AGREEMENT

This Master Software as a Service Agreement (this “Agreement”), effective as of [*Effective Date*] (the “Effective Date”) is entered into by and between Ushur, Inc., a Delaware corporation (“Ushur”) with an address of 3975 Freedom Circle, Suite 830, Santa Clara, CA 95054 and [*Customer Corporate Name*], a [*Customer Place of Incorporation*] [*Customer Entity Type*] with an address at [*Customer Address*] (“Customer”). Ushur and Customer may be referred to herein individually as a “party” and collectively as the “parties.”

WHEREAS, Ushur provides access to certain software-as-a-service (“SaaS”) offerings to its customers; and

WHEREAS, Customer desires to access the software-as-a-service offerings described herein, and Ushur desires to provide Customer access to such offerings, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### SOFTWARE AS A SERVICE

- 1.1. **General.** Customer may obtain from Ushur the right to access and use the software applications, platforms and other technology hosted by Ushur and engage Ushur to perform related services from time to time during the term of this Agreement, pursuant to the terms of this Agreement. The hosted software and related services will be more fully described in a subscription order or a statement of work executed by the parties from time to time in a form substantially similar as attached hereto as **Exhibit A** (each, a “Subscription Order”, “SO” or “Statement of Work”). Subscription Orders, SOs and Statements of Work may be referred to interchangeably in this Agreement. As used in this Agreement, “Hosted Services” means, collectively, the software applications, platforms, related databases and other technology that are hosted by Ushur and made available to Customer pursuant to a Subscription Order including, without limitation, related Documentation, Improvements and Fixes (each as defined below).
- 1.2. **Additional Exhibit Terms.** Ushur agrees to comply with the requirements outlined in the following Exhibits attached to this Agreement, which are fully incorporated herein by reference.

Exhibit A – Form of Subscription Order

Exhibit B – Service Level Agreement

Exhibit C – Insurance Requirements

Exhibit D – Security Service Level Agreement

### 1.3. Access and Use.

- 1.3.1. Grant. Ushur hereby grants to Customer a nonexclusive, worldwide, right to access and use the Hosted Services identified in a Subscription Order for (i) Customer's business purposes identified in the applicable Subscription Order and (ii) for the term of the applicable Subscription Order. Access to and use of the Hosted Services by customers of Customer will be considered authorized use under this Section 1.3(a) provided such use is in conjunction with Customer's provision of services to such customers. Ushur hereby grants to Customer a non-exclusive, non-sublicensable license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Hosted Services.
- 1.3.2. System Control. Except as otherwise expressly provided in this Agreement, as between the parties: (1) Ushur has and will retain sole control over the operation, provision, maintenance, and management of the Hosted Services and Systems (as defined below) used by or on behalf of Ushur in performing the Hosted Services ("Ushur Systems"), (2) Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer's Systems, and sole responsibility for all access to and use of the Hosted Services by any person by or through the Customer Systems or any other means controlled by Customer, including any: (i) information, instructions, or materials provided by any of them to Ushur; (ii) results obtained from any use of the Hosted Services; and (iii) conclusions, decisions, or actions based on such use of the Hosted Services. As used herein, "Systems" means a party's information technology infrastructure, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by the party or through the use of third-party services.
- 1.3.3. Use Restrictions. Customer shall not, and shall not permit any other person to, access or use the Hosted Services or Ushur Systems except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits: (1) copy, modify, or create derivative works or improvements of the Hosted Services; (2) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Hosted Services to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service; (3) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Hosted Services or Ushur Systems, in whole or in part; (4) bypass or breach any security device or protection used by the Hosted Services or Ushur Systems or access or use the Hosted Services or Ushur Systems; (5) input, upload, transmit, or otherwise provide to or through the Hosted Services or Ushur Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code (as defined below); (6) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Hosted Services, Ushur Systems, or Ushur's provision of services to any third party, in whole or in part; (7) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Hosted Services, including any copy thereof; (8) access or use the Hosted Services in any manner or for any purpose that infringes, misappropriates, or

otherwise violates any intellectual property rights or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other Ushur customer), or that violates any applicable Law (as defined below); (9) access or use the Hosted Services for purposes of competitive analysis of the Hosted Services, the development, provision, or use of a competing software service or product or any other purpose that is to Ushur's detriment or commercial disadvantage; or (10) otherwise access or use the Hosted Services or Ushur Systems beyond the scope of the authorization granted under this Section 1.3(c). For purposes of this Agreement, "Harmful Code" means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Customer from accessing or using the Hosted Services or Ushur Systems as intended by this Agreement.

- 1.3.4. Usage Limitation. Customer's use of the Hosted Services under this Agreement is subject to any applicable limitation such as, by way of example only, use specific to Customer's business process or division as may be set forth in the applicable SO. Customer may request an amendment in any such limitation at any time by giving written notice to Ushur of the required changes. The parties will negotiate in good faith appropriate changes to the applicable SO including additional fees payable by Customer.
- 1.3.5. Service Levels. Ushur shall use commercially reasonable efforts to provide the Hosted Services in accordance with the service levels set forth on Exhibit B (the "Service Levels"). In the event that the Hosted Services have not been provided in accordance with the applicable Service Levels, Customer shall receive the credits and payments from Ushur as identified in Exhibit B or the applicable SO.
- 1.3.6. Business Continuity Plan. Ushur shall have a business continuity plan in place to (i) address the loss of products, services and/or technology and third-party providers; (ii) minimize the impact of disruptions to Ushur's critical business processes and provide coordinated responses to potential or actual disruptions; and, (iii) coordinate restoration activities once a disruption has ended. Ushur shall provide a copy of its business continuity plan to Customer upon written request. Annually, Ushur shall assess and update its business continuity plan in light of current business and technology risks and shall attest to Customer that it has assessed and updated its business continuity plan and capabilities accordingly.
- 1.3.7. Data Backup. Ushur Systems are programmed to perform routine data backups as set out in Ushur's backup policy in effect from time to time (the "Backup Policy"). Upon request, Ushur will deliver to Customer its then most current Backup Policy. In the event of any loss, destruction, damage, or corruption of Customer Data caused by Ushur Systems or Hosted Services, Ushur will, as its sole obligation and liability and as Customer's sole remedy, use commercially reasonable efforts to restore the Customer Data from Ushur's then most current backup of such Customer Data in accordance with the then current Backup Policy.

1.3.8. Third Party Materials and Services. Ushur shall, at its own expense, (i) procure, or obtain licenses or rights for use by Customer, all third party materials embedded in or otherwise included as part of the Hosted Services or required for Customer's use and enjoyment of the Hosted Services as contemplated in this Agreement and the applicable SO; (ii) acquire, handle, maintain and execute any agreements for internet access necessary to make the Hosted Services available pursuant to the SO and applicable Service Levels; and (iii) host, maintain and manage the Hosted Services, including access thereto, and install and maintain the Ushur Systems by which the Hosted Services are operated.

1.4. **Other Services**. In connection with the Customer's use of the Hosted Services, Ushur will provide migration, implementation and other professional services identified in a SO ("Additional Services" and together with the Hosted Services, the "Services"). Where a SO prescribes milestones or a completion date for Additional Services, Ushur will use commercially reasonable efforts to meet such dates. In the event Ushur believes it may not meet such date, it will advise Customer in writing as soon as possible.

1.5. **Documentation**. Ushur will furnish to Customer, at no additional charge to Customer, that number of copies of Documentation as may be reasonably requested by Customer, including all subsequent revisions thereto (including revisions to such Documentation relating to any Improvements to or Fixes of the Hosted Services). Customer will have the right to copy the Documentation, at no additional charge, for its use or Customer's customers, provided all proprietary markings that had been affixed by Ushur are retained on all copies. As used herein, "Documentation" means all operating manuals, user manuals, training and marketing materials, guides, product descriptions, product specifications, RFI, RFP and RFQ responses, technical manuals, supporting materials, and other information relating to the Hosted Services and provided by or on behalf of Ushur to Customer; "Fixes" means corrections of Error(s) in order for the Hosted Services to function and perform in conformance to the Specifications and any and all improvements that relate to performance but do not provide new features or functionality for the Hosted Services; "Errors" means a failure of the Hosted Services to conform to any of the Specifications governing such Hosted Services that impacts operation, functionality or performance; and "Improvements" means all upgrades, updates, modifications, improvements, enhancements, extensions, new versions (regardless of name or number changes for such new versions or re- packaging of sub-components, sub-products, features or functions of the Hosted Services), new modules, and other changes to the Hosted Services developed by Ushur, whether for the same or a different or subsequent operating system or web browser.

#### 1.6. **Personnel**.

1.6.1. General Requirements. The parties are independent contractors and nothing in this Agreement or otherwise shall be deemed or construed to create any other relationship, including one of employment, joint venture or agency. Ushur shall be solely responsible for any taxes of any type, including central, state or local tax, employment, withholding or reporting tax, social security taxes, workers' compensation taxes or costs, unemployment compensation taxes or costs, or any other taxes or charges, provident fund, gratuity, bonus, workmen's compensation, employee state insurance, other employment law deductions, or private insurance, related to Ushur's or Ushur's personnel's receipt of compensation and performance of the Services under this

Agreement. Ushur has withheld properly all federal, state and local employment taxes from the wages of its employees and otherwise has conducted and will conduct itself not as an individual or individuals but as a legal entity separate from the persons actually performing the Services pursuant to this Agreement. In addition, Ushur agrees to inform all of its employees performing the Services that they are employees solely of Ushur and are not eligible to any of Customer's employee benefit plans, incentive, compensation or other employee programs or policies. Ushur will be solely responsible for compliance with immigration and visa Laws and requirements, including compliance with the Immigration and Reform Control Act of 1986 (IRCA) with respect to Ushur employees and contractors and utilizing the federal government E-Verify program to verify the employment eligibility of all of its employees.

1.6.2. **Account Management.** Ushur will designate an individual who will be responsible for the Services to be provided hereunder and who will be available to interact with Customer management personnel, on an as needed basis.

1.7. **Subcontracting.** Ushur may subcontract its obligations under this Agreement; provided, that Ushur will remain responsible for obligations, services and functions performed by subcontractors to the same extent as if such obligations, services and functions were performed by Ushur employees, and for purposes of this Agreement such work will be deemed work performed by Ushur. Ushur will be Customer's sole point of contact regarding the Services, including with respect to payment. Ushur will not disclose Customer Confidential Information to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in a manner substantially equivalent to that required of Ushur under this Agreement.

#### **PRICING AND PAYMENT TERMS**

1.8. **Pricing.** Customer shall pay the fees for the Services as set forth in the applicable SO.

1.9. **Taxes.** All fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Ushur's income.

1.10. **Expenses.** Customer shall reimburse Ushur for out-of-pocket expenses incurred by Ushur in connection with performing the Services.

1.11. **Invoicing and Payment.** Ushur will invoice Customer in respect to the Services in accordance with the terms set forth in the SO. Undisputed invoices will be due and payable by Customer within thirty (30) days after the invoice receipt.

1.12. **No Deductions or Setoffs.** All amounts payable to Ushur under this Agreement shall be paid by Customer to Ushur in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable laws).

- 1.13. Late Payment.** If Customer fails to make any payment when due then, in addition to all other remedies that may be available: (i) Ushur may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law; (ii) Customer shall reimburse Ushur for all costs incurred by Ushur in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for ten (10) days following written notice thereof, Ushur may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer or any other person by reason of such suspension.

#### **CONFIDENTIALITY**

- 1.14. Confidentiality Obligations.** During the term of this Agreement, from time to time, either party may disclose (the "Disclosing Party") or make available to the other party (the "Receiving Party"), whether orally, electronically or in physical form, confidential or proprietary information concerning the Disclosing Party and/or its business, products or services in connection with this Agreement (together, "Confidential Information"). Each party agrees that during the term of this Agreement and thereafter: (A) it will use Confidential Information belonging to the Disclosing Party solely for the purpose(s) of this Agreement; and (B) it will not disclose Confidential Information belonging to the Disclosing Party to any third party (other than the Receiving Party's employees, subcontractors and/or professional advisors on a need-to-know basis who are bound by obligations of nondisclosure and limited use at least as stringent as those contained herein) without first obtaining the Disclosing Party's written consent. Upon request by the Disclosing Party, the Receiving Party will return all copies of any Confidential Information to the Disclosing Party.
- 1.15. Confidentiality Exclusions.** For purposes hereof, Confidential Information will not include any information that the Receiving Party can establish by convincing written evidence: (A) was independently developed by the Receiving Party without use of or reference to any Confidential Information belonging to the Disclosing Party; (B) was acquired by the Receiving Party from a third party having the legal right to furnish same to the Receiving Party without disclosure restrictions; or (C) was at the time in question (whether at disclosure or thereafter) generally known by or available to the public (through no fault of the Receiving Party).
- 1.16. Required Disclosures.** These confidentiality obligations will not restrict any disclosure required by order of a court or any government agency; provided, that the Receiving Party gives prompt notice to the Disclosing Party of any such order and reasonably cooperates with the Disclosing Party at the Disclosing Party's request and expense to resist such order or to obtain a protective order.
- 1.17. Injunctive Relief.** The parties acknowledge and agree that the disclosure of Confidential Information may result in irreparable harm for which there is no adequate remedy at law. The parties therefore agree that the Disclosing Party may be entitled to seek an injunction in the event the Receiving Party violates or threatens to violate the provisions of this

Confidentiality section, and that no bond will be required. This remedy will be in addition to any other remedy available at law or equity.

- 1.18. **HIPAA.** Ushur understands and acknowledges that a Business Associate Agreement, to be executed separately from this Agreement, will apply in the event Ushur provides Hosted Services to Customer pursuant to which Ushur has access to, receives from, creates, or receives on behalf of Customer Protected Health Information, or Ushur has access to, creates, receives, maintains or transmits on behalf of Customer Electronic Protected Health Information (as those terms are defined under the privacy or security regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009), during the performance of its obligations under this Agreement.
- 1.19. **EU Data Protection.** If the Hosted Services involve the creation, processing, retention, deletion, use or disclosure of personal data (as that term is defined under the GDPR), including of Customer’s employees and other individuals (“Personal Data”), then Ushur will comply, and will require that its personnel and subcontractors comply, with all applicable requirements of the GDPR, including, without limitation, ensuring that transfers of Personal Data to third countries are made only in accordance with the following: (a) the transfer is to a jurisdiction deemed by the European Commission to have an adequate level of protection; (b) the transfer is subject to contractual provisions approved by the European Commission; or (c) pursuant to a framework deemed adequate and approved by the European Commission. For purposes of this Agreement, “GDPR” means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- 1.20. **Security.** Ushur acknowledges and agrees that its access to Customer Data will be subject to the provisions of **Exhibit D** (Security Service Level Agreement).

#### **INTELLECTUAL PROPERTY AND CUSTOMER DATA**

- 1.21. **Intellectual Property.** All Pre-Existing Intellectual Property of a party, and all software licensed by a party, is and will remain the exclusive property of such party. Neither party will have rights or interests in the other party’s Pre-Existing Intellectual Property except as expressly provided for in this Agreement or an applicable SO. As used herein, “Pre-Existing Intellectual Property” means any and all completed or in-progress patentable or non-patentable inventions, original works of authorship, discoveries, ideas, technology, computer programs, application programming interfaces, formulas, algorithms, systems (and all source code and object code related to any of the foregoing), techniques, know-how, data, writings, compositions, content, literary properties, documents, designs, illustrations, processes, procedures, protocols, service marks, trade secrets, copyrights, patents, and all other items, materials or works that are (i) owned or licensed by a party as of the Effective Date or that are made, conceived, developed, acquired or otherwise obtained by a party independently from such party’s obligations under this Agreement and (ii) all Improvements related to any of the foregoing. For avoidance of doubt, Ushur’s Pre-Existing Intellectual

Property includes the Hosted Services, Ushur Systems and Resultant Data. As used in this Agreement, “Resultant Data” means anonymous analytics that is derived from or through the use of the Hosted Services and is used by Ushur in an aggregate manner, including to compile statistical and performance information related to the provision and operation of the Hosted Services.

**1.22. Customer Data.**

1.22.1. Ownership of Customer Data. As used in this Agreement, “Customer Data” means all (i) data, information or other materials provided by Customer to Ushur and intended for use with the Services or stored or processed by Ushur as part of the Services, and (ii) results obtained from any use of the Services, other than Resultant Data. Customer Data is Pre-Existing Intellectual Property and Confidential Information of Customer. As between Customer and Ushur, Customer has and retains exclusive ownership of all Customer Data. Ushur will not possess or assert any lien or other right against or to Customer Data. No Customer Data, or any part thereof, will be sold, assigned, licensed, leased or otherwise disposed of or disclosed to third parties by Ushur or commercially exploited by or on behalf of Ushur.

1.22.2. Use of Customer Data. All rights to Customer Data not granted in this Agreement are hereby reserved to Customer. The access to and use of Customer Data is licensed and not sold. To the extent Ushur receives or has access to any Customer Data in the course of providing the Services hereunder, Customer grants to Ushur a non-exclusive, revocable, non-transferable, non-sublicensable, limited license to access and use Customer Data solely for the purpose of delivering the Services pursuant to the applicable SO and expressly subject to the limitations set forth in this Agreement.

**REPRESENTATIONS AND WARRANTIES;  
COMPLIANCE WITH LAWS; CONFLICT OF INTEREST**

1.23. **Mutual Warranties.** Each party represents and warrants to the other party that: (i) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (ii) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement; (iii) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and (iv) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

**1.24. General Services and Performance Warranties.**

1.24.1. Hosted Services Warranty. Ushur represents and warrants to Customer that the Hosted Services will function and perform substantially in conformance to the Specifications during the term of the applicable SO. In the event that the Hosted Services fail to satisfy this warranty, Ushur will, at its own expense, either: (i) promptly

replace the Hosted Services with a solution that conforms to this Agreement and such Specifications; or (ii) promptly repair the Hosted Services, at Ushur's cost, so that they conform to this Agreement and such Specifications.

1.24.2. **General Services Warranties.** Ushur represents and warrants to Customer that: (1) Ushur will provide the other Services in a timely, workmanlike and professional manner; (2) all Services performed will not, to Ushur's knowledge, infringe the copyrights, patents, trade secrets or other intellectual property or other rights of any third party; (3) this Agreement and Ushur's performance of the Services and its other obligations hereunder will not conflict with, breach or constitute a default under (i) any other agreements to which Ushur is a party or (ii) any duty owed by Ushur to any other person, governmental entity, firm, corporation, partnership, association or other organization; and (4) there is no pending or threatened litigation involving Ushur that may impair or interfere with Customer's right to use the Hosted Services.

1.25. **Disclaimer.** OTHER THAN AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR ANY SO, THERE ARE NO OTHER WARRANTIES EXPRESS OR IMPLIED. USHUR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, USHUR MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR RESULTS OF THE USE THEREOF WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

1.26. **Compliance with Laws.** Ushur shall comply with all applicable federal, state and local laws, orders, rules, ordinances, regulations, and codes (collectively, "Laws"), including without limitation Ushur's obligations as an employer regarding the health, safety and payment of its employees. Without limiting the generality of the foregoing, Ushur will be responsible for compliance with all (a) Laws applicable to Ushur and Ushur's business that affect the provision or receipt of the Hosted Services, (b) Laws applicable to the performance or delivery of the Hosted Services, and (c) privacy and security Laws to which any Customer Data is subject.

## INDEMNIFICATION

1.27. **Ushur Indemnification.** Ushur shall, at its own expense, defend, indemnify and hold Customer harmless against any third party claims, actions or proceedings, damage, losses, costs and expenses (including reasonable attorneys' fees) arising from or based on a claim that the Hosted Services, as provided by Ushur, infringe the intellectual property rights of any third party. Ushur shall have no liability for any claim of infringement based in whole or in part upon (i) the modification of the Hosted Services by anyone other than Ushur or Ushur's employees, agents, contractors, or subcontractors or (ii) the use of the Hosted Services, or any portion thereof: (a) outside the scope of this Agreement and such claim would not have arisen but for such use outside the scope of the Agreement, or (b) bundled

with other hardware, software or service and such claim would not have arisen but for such bundled use, (iii) if the infringement would have been avoided by the use of a current or unaltered update or release of the Hosted Services, or (iv) in a manner other than for which it was specified by Ushur in the Documentation or the applicable SO. THIS INDEMNIFICATION SECTION SETS FORTH CUSTOMER'S SOLE REMEDIES AND USHUR'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE HOSTED SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

- 1.28. **Customer Indemnification.** Customer shall, at its own expense, defend, indemnify and hold Ushur harmless against any third-party claims, actions or proceedings, damage, losses, costs and expenses (including reasonable attorneys' fees) arising from or based on a claim that the Customer Data including any authorized use thereof by Ushur infringes the intellectual property rights of any third party.
- 1.29. **Indemnification Procedures.** The indemnification obligations of each party are dependent on the party seeking indemnity (a) giving the indemnifying party prompt written notice of such claim, (b) permitting the indemnifying party to defend or settle the claim, (c) not making any admission of liability in respect of the whole or any part of the claim or entering into any agreement or negotiation to settle or dispose of the claim, (d) providing all reasonable assistance to the indemnifying party in defending or settling the claim, and (e) the claim shall not have arisen due to unauthorized acts or misconduct of the other party or a third party, acting on behalf of such other party.

## LIABILITY

- 1.30. **General Intent.** Subject to the specific provisions of this Liability section, it is the intent of the parties that each party will be liable to the other party for any actual damages incurred by the non-breaching party as a result of the breaching party's failure to perform its obligations in the manner required by this Agreement.
- 1.31. **Waiver of Damages; Cap on Monetary Damages.** SUBJECT TO SECTION 1.32, IN NO EVENT, WHETHER IN CONTRACT OR IN TORT (INCLUDING BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT), WILL A PARTY BE LIABLE FOR INDIRECT OR CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. SUBJECT TO SECTION 1.32, EITHER PARTY'S MAXIMUM LIABILITY TO THE OTHER UNDER THIS AGREEMENT IS LIMITED TO THE FEES PAID BY CUSTOMER TO USHUR IN THE TWELVE (12) CALENDAR MONTH PERIOD IMMEDIATELY PRECEDING THE DATE FOR WHICH ANY CLAIM OF LIABILITY IS MADE.
- 1.32. **Exceptions; Cumulative Remedies.** The limitations set forth in Section 1.31 will not apply with respect to: (A) damages caused by the fraudulent or willful misconduct or gross negligence of a party; (B) claims that are the subject of indemnification under this Agreement; or (C) damages occasioned by a party's breach of its obligations with respect to

Confidential Information. In no event shall either party's liability for claims that are subject to indemnification under this Agreement exceed two million dollars (\$2,000,000).

## **TERM AND TERMINATION**

- 1.33. **Term.** This Agreement will become effective on the Effective Date and shall remain in force for a period three (3) years; provided, that, if any SO is outstanding on the third anniversary of the Effective Date, then the Agreement will continue to remain in force until the expiration of such SO. Each SO will become effective on the start date, and will remain in force for the period, set forth in such SO.
- 1.34. **Termination.** This Agreement may be terminated by either party if the other party breaches or defaults on any of the provisions of this Agreement, and such breach is not cured within thirty (30) days after the breaching party receives written notice. Termination of this Agreement will not impact any SO then in effect, which will continue in effect until completed or otherwise terminated under Section 8.2 and Section 8.3 and will be governed by the terms of this Agreement while in effect.
- 1.35. **SO Termination for Cause.** If either party breaches or defaults on any of the provisions of any SO, and such breach is not cured within thirty (30) days after the breaching party receives written notice, then in addition to all other rights and remedies of law or equity or otherwise, the injured party will have the right to terminate any SOs impacted by such breach without any obligation or liability, at any time thereafter. Termination of any SO shall not serve to terminate this Agreement or any other outstanding SO(s), each of which shall continue in force in accordance with its respective terms until the earlier of its termination or expiration in accordance with the Agreement.
- 1.36. **Insolvency.** Either party will have the right to immediately, or with such written notice as such party deems reasonable, terminate this Agreement and any SOs in the event the other party: (1) ceases to do business as a going concern; (2) becomes subject to any bankruptcy or insolvency proceeding under federal or state statute (and if the proceeding is involuntary, it is not dismissed within sixty (60) days of its commencement); (3) becomes insolvent or becomes subject to direct control by a trustee, receiver or similar authority; (4) has wound up, dissolved or liquidated, voluntarily or otherwise; (5) makes a general assignment for the benefit of its creditors; or (6) takes any action authorizing or in furtherance of any of the foregoing.
- 1.37. **Effect of Termination.** Upon the expiration or termination of this Agreement or a SO, if applicable, each party will, upon the request of the other, (a) return all papers, materials and properties of the other held by such party (other than software or other materials for which the license to such materials has not expired), and (b) provide reasonable assistance in the termination of this Agreement, as may be necessary for the orderly, non-disrupted business continuation of each party. At Customer's option, upon termination of this Agreement or SO for any reason, Ushur will provide to Customer or Customer's designee reasonable transition services at Ushur's then current rates for such services. In no event will Ushur inhibit in any way Customer's attempt to effect a smooth transition.

- 1.38. **Transition Assistance.** Upon Customer's request, Ushur shall, for a period of time not to exceed three (3) months (unless otherwise agreed by the parties) and at the rates currently in effect for any applicable SO, Ushur will continue to provide the Hosted Services provided by Ushur prior to such expiration or termination, and any new services requested by Customer that may be required to facilitate the orderly transfer of the Hosted Services to Customer or a Customer designee, as applicable (collectively, "Transition Assistance"), even if such Transition Assistance extends beyond the expiration of the SO term or the effective date of termination of such SO or this Agreement. The provisions of this Agreement will remain in effect for the agreed upon Transition Assistance period and will apply to all Transition Assistance services provided by Ushur during such period. At a minimum, Ushur will provide to Customer and any Customer designee at no charge all Customer Data, in Ushur's then-current format.
- 1.39. **Survival.** Customer and Ushur's respective obligations hereunder which by their nature would continue beyond the termination or expiration of this Agreement or any SO, shall survive. This includes, by way of example but not limited to, the obligations provided under the Sections or Exhibits with the following headings: "CONFIDENTIALITY", "INDEMNIFICATION").

#### **ASSIGNMENT**

Neither party may assign this Agreement or any SO, or any of such party's rights (except the right to receive payments hereunder) or duties under this Agreement, without the prior written consent of the other party. Any attempted assignment without other party's consent will be void. Either party may freely assign all or any part of this Agreement, without the consent of the other party, either: (A) to an Affiliate; or (B) incidental to a sale, transfer or other disposition by a party or an Affiliate of all or substantially all of the assets of that component of such party's business or its Affiliate's business having the benefit of the goods and/or services under this Agreement. All benefits under this Agreement shall accrue and inure to each party's valid and legal heirs, successors and assigns. For purposes of this Agreement, "Affiliate" of a person means any other person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such person. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

#### **RECORD KEEPING AND AUDIT**

Ushur agrees to maintain accurate and complete records relating to the provision of Services provided under this Agreement. Ushur will maintain records relating to the provision of the Services under this Agreement for a period of six (6) years from the creation of the applicable record, except to the extent that Customer may require a longer or shorter retention period for specific categories of records. Ushur agrees that, during the term of this Agreement and for a period of six (6) years after the expiration or termination of this Agreement or the applicable Subscription Order, as appropriate, Customer or its designee(s) may, at any time upon not less than ten (10) business days' notice to

Ushur, (i) examine the books and records of Ushur related to Ushur's and any of its subcontractors' performance under this Agreement, and (ii) verify the integrity of Customer Data and examine the systems that process, store, secure, support, and transmit that data ("Audit"). Ushur will cooperate fully, and cause its subcontractors to cooperate fully, with any such Audit(s) and will provide all books, records, data and other documentation reasonably requested by Customer. Customer may make copies of such documentation. The Audit(s) will be conducted during normal business hours, and at Customer's expense.

#### **ENTIRE AGREEMENT; ORDER OF PRECEDENCE.**

This Agreement contains the entire understanding of the parties and may be amended only by a writing signed by the parties. This Agreement (including its Exhibits), and any SOs placed hereunder shall constitute the entire agreement between Customer and Ushur. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any SO, the terms and conditions of this Agreement will control, unless the SO makes specific reference to the section of this Agreement that is to be amended. Any exceptions expressly agreed upon in writing by Customer (or an applicable Affiliate) and Ushur under a particular SO will apply only for purposes of that SO, and will not be deemed to in any way amend, modify, cancel, or waive the provisions of this Agreement or any other SO. Any amendment or modification to this Agreement or any duly executed SO hereunder shall not be valid, enforceable, or binding on the parties unless such amendment or modification (1) is a written instrument duly executed by the authorized representatives of both parties and (2) references this Agreement and any SO, if applicable, and identifies the specific sections contained therein which are amended or modified. The terms and conditions of the Exhibits and any SO hereunder are integral parts of this Agreement and are fully incorporated herein by this reference. No conflicting or supplemental pre-printed provisions on Ushur and Customer forms (including without limitation shrink wrap terms, terms on purchase orders or invoices) shall be binding on the parties.

#### **INSURANCE**

During the Term of this Agreement and for the duration of any Transition Assistance, Ushur shall carry and maintain at its own cost, insurance coverages as set forth in **Exhibit C** (Insurance Requirements).

#### **GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL**

This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the laws of the State of California, excluding its conflict of laws principles and excluding the Uniform Computer Information Transactions Act (UCITA) as may be enacted, amended, or modified by the various states. The parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement or any related transaction between the parties. The parties irrevocably and unconditionally consent to venue in Santa Clara County, California (and hereby waive any claims of

forum non conveniens with respect to such venue) and to the non-exclusive jurisdiction of competent California state courts in Santa Clara County or federal courts in the Northern District of California for all litigation which may be brought with respect to the terms of, and the transactions and relationships contemplated by, this Agreement. The parties further consent to the jurisdiction of any state court located within a district that encompasses assets of a party against which a judgment has been rendered for the enforcement of such judgment against the assets of such party. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND (B) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

#### FORCE MAJEURE

- 1.40. **No Breach or Default.** In no event will either party 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), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "Force Majeure Event"), including (i) acts of God; (ii) flood, fire, earthquake, other potential disaster(s) or catastrophe(s), such as epidemics, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v) embargoes or blockades in effect on or after the date of this Agreement; (vi) national or regional emergency; and (vii) shortage of adequate power, communications or transportation facilities. Either party may terminate this Agreement if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of ninety (90) days or more.
- 1.41. **Affected Party Obligations.** In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

#### PUBLICITY

Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided, however, that Ushur may, without Customer's consent, include Customer's name and other indicia in its lists of Ushur's current or former customers of Ushur in promotional and marketing materials.

Customer agrees to participate in reasonable joint marketing programs with Ushur. Such marketing programs will be mutually agreed upon, but will include, at a minimum, a press release announcing either that Customer has subscribed to the Hosted Services or Customer has gone live using the Hosted Services. Customer's logo will be included on Ushur's website, marketing materials and presentations. Customer also agrees to participate in a case study describing the use of the Hosted Services within its organization, and to participate in, or host a reasonable number of reference calls or reference visits from Ushur prospects. All material to be published featuring Customer (except for a mention of Customer in a general press release or Customer list) is subject to the prior approval of Customer, such approval not to be unreasonably withheld or delayed. The timing in which any of these joint marketing activities are pursued will be agreed upon by both companies.

#### **SEVERABILITY**

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining portions of this Agreement shall be construed as if not containing such provision, and all other rights and obligations of the parties shall be construed and enforced accordingly.

#### **NOTICES**

All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the signature page (or at such other address for a party as shall be specified in a notice given in accordance with this Notices section): Routine operational communications (which will not constitute legal notice) related to administration of the Agreement, may be sent to the parties using any contact information provided in the course of performance.

#### **NO WAIVER**

No waiver or failure to exercise any option, right, or privilege under the terms of this Agreement on any occasion or occasions shall be construed to be a waiver of the same or any other option, right or privilege on any other occasion.

#### **NON-SOLICITATION**

During the applicable term of this Agreement and for one (1) year thereafter, neither party shall, directly or indirectly, knowingly solicit for employment, offer employment to or employ or retain (whether as an employee, officer, agent, consultant, advisor or in any other capacity) any employee or contractor of the other party that such party interacted with in connection with Ushur's provision of the Services and Customer's receipt or use of the Services. Notwithstanding the foregoing, this Agreement will not prohibit solicitations through general public advertising or other publications of general public circulation.

#### **REMEDIES CUMULATIVE**

No right or remedy herein conferred upon or reserved to either party is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Agreement or applicable Laws.

#### **THIRD PARTY BENEFICIARIES.**

This Agreement is entered into solely between, and may be enforced only by, Customer and Ushur. This Agreement will not be deemed to create any rights in third parties or to create any obligations of a party to any third parties, other than in and to Customer's Affiliates receiving Hosted Services hereunder.

#### **HEADINGS**

The headings used in this Agreement are for reference only and shall not limit or control any provision of this Agreement or its interpretation or construction.

#### **COUNTERPARTS**

This Agreement and any SO may be signed in any number of counterparts all of which together shall constitute one and the same document. A signed copy of this Agreement or any Service Order transmitted via facsimile, email or other electronic means shall constitute an originally signed Agreement or Service Order and, together with all other required signed copies of this same Agreement or Service Order, shall constitute one and the same instrument.

***[Signature Page Follows]***



IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives.

**[Customer Name]**

**Ushur, Inc.**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_  
\_\_\_\_\_

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

Name: Rajiv Bhagat

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

Title: SVP of Finance

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

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

Address for Notice: \_\_\_\_\_

Address for Notice: \_\_\_\_\_

E-mail: \_\_\_\_\_

\_\_\_\_\_  
E-mail: \_\_\_\_\_  
\_\_\_\_\_

**USHUR, INC.**

**EXHIBIT A**

**FORM OF SUBSCRIPTION ORDER**

**EXHIBIT B**

**SERVICE LEVEL AGREEMENT**

**1. DEFINITIONS.**

1.1. “Excused Downtime” means anytime the Hosted Service are not available for access that (i) occurs during a Scheduled Maintenance Period or (ii), (A) services, software or hardware not provided and controlled by Ushur (including third-party services, software or sites that are accessed or linked through the Service), or (B) Force Majeure Events.

1.2. “Scheduled Maintenance Period” means the any time period during which Ushur performs scheduled or emergency maintenance on the Hosted Services.

**2. SERVICE LEVEL.** Ushur will use commercially reasonable efforts to cause the uptime for the Hosted Services to be no less than 99.9%, excluding Excused Downtime.

**3. SUPPORT SERVICES.**

3.1. The Support Services provided under this Agreement (the “Support Services”) will include online support available during Ushur’s normal business hours (7 am PST to 7 pm Pacific Time) with the exception of Ushur’s holidays.

3.2. The Support Services will be provided only for those issues forwarded to Ushur from Customer’s designated staff members (not more than four (4)) and entered via the Customer support portal. Customer must provide Ushur with accurate and complete information regarding each issue logged by Customer, including without limitation designated points of contact and passwords for maintenance and repair use by Ushur support agents. Ushur will not be responsible for any delays or failures caused by Customer’s failure to abide by the requirements of this Section 3.2. Ushur may reclassify any case misclassified as falling into one of the severity categories listed below.

3.3. The Support Services are offered to Customer on a commercially reasonable-efforts basis only. Customer acknowledges that Ushur may not be able to resolve every request for support through the Support Services. Customer’s exclusive remedy and Ushur’s sole obligation for any failure to resolve a request shall be to use commercially reasonable efforts to resolve such request. In the event that the request for support is not covered by the Support Services, Customer may have to purchase additional services from Ushur. Any additional services are made available upon agreement by Ushur at Ushur’s then-current rates. The Support Services are provided for on-going use of the Service; they are not intended to be a substitute for the professional services or training necessary for the implementation of the Service. All other services, including without limitation, on-site assistance, custom programming, network administration, new features and custom designed reports and forms, may be furnished by Ushur at Ushur’s then-current rate.

3.4. As part of Support Services, Ushur will investigate all reproducible, material failures of the Service to conform to the specifications as described in the applicable documentation.

### 3.5. Support Matrix

| Priority Level       | Description of Issue                                                                                                                                                                                                                       | Resolution of Issue                                                                                                                                                                                                                                                                                                                                                                                                 | Resolution Time                 |
|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| Priority One Issue   | An Issue that, in the reasonable judgment of Customer, renders the Services inoperable or is causing a serious adverse impact to Customer's business operations.                                                                           | Ushur shall provide Customer with a telephonic, electronic or other notification within thirty (30) minutes in the event of a Priority One Issue and shall initiate diagnostic and remedial measures immediately. Once Ushur has commenced corrective measures, Ushur will work continuously and diligently until the Issue has been remedied. Ushur will periodically advise Customer concerning Ushur's progress. | One (1) hour with 24x7 coverage |
| Priority Two Issue   | An Issue that materially impairs the Services' performance of one or more facilities or functions detailed in the specification, with the consequence that Customer's business can be performed but in a restricted or inefficient manner. | Ushur shall provide Customer with a telephonic, electronic or other notification within two (2) hours in the event of a Priority Two Issue and shall initiate diagnostic and remedial measures immediately. Once Ushur has commenced corrective measures, Ushur will work continuously and diligently until the Issue has been remedied. Ushur will periodically advise Customer concerning Ushur's progress.       | Four (4) hours                  |
| Priority Three Issue | An Issue that does not significantly affect Customer's current day-to-day business operations; but the performance or efficiency of Customer's business operations might improve if such Issue were to be corrected.                       | Ushur will endeavor to correct the Issue as soon as practicable.                                                                                                                                                                                                                                                                                                                                                    | As soon as practicable          |

## 4. SERVICE LEVEL CREDITS.

4.1 If the Services availability for a given quarter is less than 99.9%, Customer, as its sole remedy, will be entitled to a refund of a portion of the fees payable to Ushur with respect to that quarter calculated on a pro rata basis, in accordance with the following schedule:

| Quarterly Availability | Availability Refund |
|------------------------|---------------------|
| 99.9% or above         | 0%                  |
| 99 to 99.9%            | 1%                  |
| 98 to 98.9%            | 2%                  |
| 98% or below           | 3%                  |

4.2 Ushur shall measure the Service unavailability on a quarterly basis and pay the Customer service credits set forth above within forty-five (45) days of the end of the month in which such credits accrue. Notwithstanding anything to the contrary in this Agreement, no service credits will be issued, if Customer is not current in its payment obligations under the Agreement either when the outage occurs or when the credit would otherwise be issued.

**USHUR, INC.**

**EXHIBIT C**

**INSURANCE REQUIREMENTS**

1. Workers' Compensation Insurance (in compliance with Laws) and Employers' Liability Insurance of one million dollars (\$1,000,000).
2. Commercial General Liability Insurance on an "occurrence basis" of one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage liability and two million dollars (\$2,000,000) combined aggregate.
3. Automobile Insurance covering all owned, non-owned and leased automobiles, with a limit of one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage.
4. Professional (Errors and Omissions) Liability Insurance covering liability due to error, omission, or negligence of employees in an amount of five million dollars (\$5,000,000).
5. Technology Errors and Omissions Liability Insurance; including Cyber Liability/Network Security/Privacy coverage in an amount of five million dollars (\$5,000,000).
6. Umbrella Liability Insurance with a limit of ten million dollars (\$10,000,000) per occurrence and ten million dollars (\$10,000,000) aggregate in excess of other coverages listed in this section.
7. Employment Practices Liability Insurance, including sexual harassment defense coverage and wrongful discharge/discrimination coverage with a limit of one million dollars (\$1,000,000) per occurrence and in the aggregate.

**EXHIBIT D**

**SECURITY SERVICE LEVEL AGREEMENT**

**1. Physical Security**

Ushur runs its services to customers on the AWS (Amazon Web Services) infrastructure. AWS recommends a shared responsibility model for users of AWS. Ushur has implemented the AWS recommendations to maintain a secure infrastructure. Details of the shared responsibility model where AWS provides the secure infrastructure and services and Ushur implements security for Operating systems, platforms and Data can be found here:

[https://aws.amazon.com/architecture/security-identity-compliance/?cards-all.sort-by=item.additionalFields.sortDate&cards-all.sort-order=desc&awsf.content-type=\\*all&awsf.methodology=\\*all](https://aws.amazon.com/architecture/security-identity-compliance/?cards-all.sort-by=item.additionalFields.sortDate&cards-all.sort-order=desc&awsf.content-type=*all&awsf.methodology=*all)

**1.1 Secure Facility/ Caged Environment** The equipment hosting the Customer data will be located in a physically secure facility, which requires badge access at a minimum. This falls under AWS's responsibility to provide a secure infrastructure. Ushur or its employees don't have access to the physical infrastructure or the facility.

**2. Network Security**

**2.1 Information Disclosure.** Upon written request from Customer, Ushur will provide a proposed architecture document that includes a full network diagram, with a full data flowchart that details where Customer data resides, the applications that manipulate it, and the security thereof.

**2.2 Firewalls.** Ushur deploys reasonably appropriate firewall technology in operation of services, and Customer data will be protected and authenticated by cryptographic technology. See Cryptography below.

**3. Host Security** Ushur has implemented the best practices recommended by AWS with respect to the security of the Operating system, platforms and customer data. The AWS recommendations on this can be found here:

[https://aws.amazon.com/architecture/security-identity-compliance/?cards-all.sort-by=item.additionalFields.sortDate&cards-all.sort-order=desc&awsf.content-type=\\*all&awsf.methodology=\\*all](https://aws.amazon.com/architecture/security-identity-compliance/?cards-all.sort-by=item.additionalFields.sortDate&cards-all.sort-order=desc&awsf.content-type=*all&awsf.methodology=*all)

Upon written request from Customer, Ushur will provide Customer with the following information, all of which shall be considered Ushur's Confidential Information.

**3.1.1** Operating System and security hardening procedures including details of software versions and patches on hosts, including host Operating System patches, web servers, databases, and any other material application.

- 3.1.2 Policy for applying patches and identifying and mitigating security vulnerabilities.
- 3.1.3 Processes for monitoring the integrity and availability of Customer related hosts.
- 3.1.4 Information on password policy for the application infrastructure, including minimum password length, password generation guidelines.
- 3.1.5 Information on the account management process, for all accounts for which Ushur is responsible.

#### **4. Security Audits**

- 4.1 Periodic Audits.** Upon a written request from Customer, Ushur would allow for an audit to ensure compliance with the requirements of this Exhibit. Such audits will take place during Ushur's ordinary office hours and subject to Ushur's reasonable security restrictions. This type of audit will not be performed more often than once per calendar year.
- 4.2 Audit After an Incident.** If a breach of security event occurs at Ushur's site, Customer may conduct a security audit. Ushur will be granted 90 days to respond to any issues identified through the audit. Once identified issues have been resolved, Customer may conduct a security audit to ensure the completion of the resolution.

#### **5. Security Incident Response**

- 5.1 Notification Timing.** Ushur will immediately communicate any security breaches related to services to Customer promptly after discovery thereof and will provide immediate feedback about any impact this breach may/will have on Customer or its data. Ushur will give its best effort to notify Customer of the security breach no more than 2 hours after detecting the breach. No more than 24 hours will pass between Ushur detecting a security breach and Customer being notified.
- 5.2 Notification Format.** Notification of a security breach will take the form of a phone call to the Customer Network Operations Center (NOC) or to an email to a previously agreed email address  
  
Ushur will provide the following information during the notification phone call:
  - a. Problem statement.
  - b. Expected resolution time (if known). If the resolution path is unknown at the time of the phone call, Ushur will state this; and,
  - c. The name and phone number of an Ushur representative Customer can contact to obtain incident updates.
- 5.3 Customer Security Resources.** Customer may, upon mutual agreement with Ushur, provide resources from its security group to assist with an identified security breach.
- 5.4 Customer Environment Isolation.** Ushur will be able either to immediately disable functionality of the application or to isolate and safeguard the Customer data should a security issue be identified. Customer reserves the right to require Ushur to isolate its databases/servers/networks if it appears that Customer data is being compromised by the security

breach.

## **6. Cryptography**

Ushur uses Secure certificate issued by Go Daddy Secure Certificate Authority to deliver services through its SaaS offering.

**6.1 Proprietary Encryption.** Ushur does not employ any proprietary encryption techniques to secure the in-flight or stored data.

**6.2 Encryption Strength.** Ushur uses 256 bit RSA encryption.

**6.3 Hashing Functions.** Hashing functions supported: PBKDF2

## **7. Customer Data**

**7.1 Delete/Destroy.** Ushur purges all customer data after it has fulfilled the purpose of the contract.

## **8. Personally Identifiable Information.**

**8.1** To the extent that Ushur receives, maintains, processes or otherwise has access to PII in connection with the services provided to Customer under the Agreement, Ushur acknowledges and agrees that it is responsible for maintaining appropriate security measures to protect such PII. Ushur shall protect and secure such PII in accordance with all applicable privacy and data protection laws.

**8.2** Upon request, Ushur shall provide to Customer documentation or other evidence of its data protection policies and practices.

**8.3** “Customer Data” means, in or on any medium or form of any kind: (i) data or summaries or indices of data related to and provided by Customer, its customers (including PII), its associates (including PII), its third party partners, or the services (generated or compiled by Customer, or provided by its customers), including data that is in Customer’ databases or otherwise in Customer’ possession on the Effective Date of the Agreement or at any time during the Term of the Agreement; and (ii) all other Customer records, data, files, input materials, reports, forms, and other such items that may be received, computed, developed, used, or stored by Vendor, or by any subcontractors, for Customer in the performance of Vendor’s duties under the Agreement.

**8.4** In the event that Ushur becomes aware that it has received Customer Data that was not intended for receipt by Vendor or authorized to be received by Vendor under this Agreement, Ushur shall (i) promptly notify Customer at [legal@Customer.com](mailto:legal@Customer.com) that it received Customer Data that was not intended for Vendor or that Vendor is not authorized to receive under this Agreement, and (ii) unless otherwise instructed in writing, retain the Customer Data until Vendor is contacted by [legal@Customer.com](mailto:legal@Customer.com) with instructions on what to do with the Customer Data.