



MASTER SERVICE AGREEMENT

BY ACCEPTING THIS AGREEMENT (BY CLICKING A BUTTON OR BOX INDICATING ACCEPTANCE, BY ACCESSING A VELOCITY SERVICE (AS DEFINED BELOW) ONLINE, OR BY EXECUTING AN ORDER FORM (AS DEFINED BELOW) THAT REFERENCES THIS AGREEMENT), YOU AGREE TO ALL OF THE TERMS OF THIS AGREEMENT. IF YOU ARE AN INDIVIDUAL ENTERING INTO THIS AGREEMENT ON BEHALF OF A LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT ACCESS OR USE VELOCITY'S SERVICES.

This Master Service Agreement (this "**Agreement**") is between the party accepting this Agreement ("**Customer**") and Velocity, Inc., a Delaware corporation ("**Velocity**"), and governs Customer's purchase, access and use of Velocity's Services (as defined below). This Agreement is effective as of the date (the "**Effective Date**") Customer accepts this Agreement as described above. Customer and Velocity are referred to as a "**Party**" and collectively as the "**Parties**."

1. Definitions. The following capitalized terms used herein shall be defined as follows:

- 1.1. "Customer Data"** means all electronic data owned, and uploaded or submitted, by Customer to the Service.
- 1.2. "Documentation"** means Velocity's then-current technical and functional documentation as well as any roles and responsibilities descriptions, if applicable, for the Hosted Service which is made available to Customer with the Hosted Service.
- 1.3. "Hosted Service"** or sometimes referred to herein as just the "**Service**" means any distinct, subscription-based, hosted, supported and operated on-demand solution provided by Velocity under an Order Form, but excluding any Third Party Applications.
- 1.4. "Malicious Code"** means code, files, scripts, agents or programs intended to do harm, such as viruses, worms, time bombs and Trojan horses.
- 1.5. "Order Form"** means the online or physical ordering document for a Hosted Service that references this Agreement. Order Forms are deemed incorporated herein by reference and governed by this Agreement.
- 1.6. "Third Party Application"** means a software application or software functionality (regardless of delivery format, e.g., Web-based, mobile, widget, offline, via an interface, or other) that is provided by Customer or by a third party, and that interoperates with or that is delivered with, through, or as part of a Hosted Service; a non-exclusive list of examples of Third Party Applications may be seen at our technology partner link, the current version of which is located at <https://velocity.com/partners/partner-network/>.
- 1.7. "Users"** means individuals authorized by Customer to access the Hosted Service and supplied user identifications and passwords for the Hosted Service.

2. Subscription and License to Use the Hosted Service.

2.1. Subscriptions; Implementation. Unless otherwise provided in the applicable Order Form, Hosted Services are purchased as subscriptions during which Customer is granted a License to use the applicable Hosted Services pursuant to Section 2.2. Unless Customer purchases implementation services under an Order Form, for which Customer shall pay an additional Fee in the amount set forth in such relevant Order Form, Customer shall be solely responsible for implementation of the Hosted Service in Customer's computer network environment.

2.2. License. Velocity grants Customer, subject to (i) the restrictions in this Section 2, and (ii) Customer's ongoing compliance with this Agreement, during the applicable subscription term, a non-exclusive, non-transferable, non-sub-licensable license (a "**License**") to use the Hosted Service and Documentation solely for Customer's internal business purposes. Velocity hosts the Hosted Service and reserves the right to make changes and updates to the functionality and/or Documentation of the Hosted Service from time to time. Customer may access the Hosted Service until the applicable subscription term and/or the Term of this Agreement expires or is terminated as provided herein. Customer's purchases hereunder are neither contingent on the delivery of any future functionality or features, nor dependent on any oral or written statements made by Velocity regarding future functionality or features. The method and means of providing the Hosted Service, and Customer with access to the Hosted Service, shall be under Velocity's exclusive control and administration.

2.3. User Accounts. The number of Users authorized to access the Hosted Service shall be limited to the number set forth on the applicable Order Form. Only individual Users designated by Customer may access the Hosted Service and User credentials may not be shared with any other individual. Customer may reassign a single User's credentials to another individual to replace former Users who no longer require ongoing access by providing notification thereof to Velocity. Customer is responsible for all User actions in violation of this Agreement and all activities that occur under Customer's User accounts. Customer is responsible for maintaining the security and confidentiality of all User usernames and passwords. Customer agrees to notify Velocity immediately of any unauthorized use of any User username, password or account or any other known or suspected breach of the Hosted Service's or Website's security. Customer may reduce the number of Users under a particular License, but such reduction shall not take effect until after the expiration of the Initial Term or the then-current renewal term, by notifying Velocity in writing at least thirty (30) days prior to the expiration of the then current subscription term of the applicable Order Form. Customer may add additional Users during the Term by executing an additional Order Form. Users added by Customer during the applicable subscription term of an Order Form cannot be terminated or removed by Customer before the end of that subscription term. If additional Users are added on a day other than the first day of a month, Customer will be charged a pro-rated amount of associated Fees for such additional Users for the first month. Customer is responsible for paying for all User accounts ordered for the entire subscription term, whether or not such User accounts are used.

2.4. Restrictions. Customer shall not: (a) license, sublicense, sell, disclose, lend, transfer, convey, resell, rent, lease, assign, distribute, timeshare or otherwise commercially exploit or make the Hosted Service available to any third party; (b) use the Hosted Service in violation of applicable law or regulations; (ii) send or store infringing, obscene, threatening, libelous or otherwise unlawful or tortious data/material including; (iii) upload, send or store any Malicious Code; (c) interfere with or disrupt the integrity or performance of the Hosted Service; (d) attempt to gain unauthorized access to the Hosted Service; (e)(i) modify, alter, tamper with, copy or create derivative works based on the Hosted Service or software included within the Hosted Service; (ii) create internet "links" to or from the Hosted Service, or "frame" or "mirror" any content forming any part of the Hosted Service other than on Customer's own intranets or otherwise for its own internal business purposes; (iii) use or access the Hosted Service to: (1) build a competitive product/service, benchmark or for other competitive purposes, (2) make or have made a product using similar ideas, features, functions or graphics of the Hosted Service; or (d) disassemble, reverse engineer or decompile the Hosted Service or the Velocity Technology



or otherwise attempt to derive the source code of any software included within the Hosted Service for any purpose or reason. Velocify reserves the right to remove (but is not obligated to do so), and Customer and Users may not use the Hosted Service to store or transmit, any Customer Data that is infringing, libelous, or otherwise unlawful or tortious material, or any material in violation of third-party privacy rights. Customer and Users will comply with all applicable laws regarding Customer Data and use of the Hosted Service, including laws involving private data or data subject to export control. Customer warrants that (i) no Customer Data is subject to export control laws, or (ii) if it is, Customer has obtained all necessary export licenses to allow Customer's Users to access and view any Customer Data subject to such laws and/or export control in any applicable jurisdiction. Velocify reserves the right to suspend or terminate immediately any Customer or User account or activity that is disrupting or causing harm to Velocify's computers, networks, systems or infrastructure or to other parties, or is in violation of any applicable law.

2.5. Usage Limits. Hosted Services are subject to usage limits, including, for example, the quantities specified in Order Forms. If Customer exceeds a contractual usage limit, Velocify may work with Customer to seek to reduce such usage to conform. If, notwithstanding such efforts, Customer is unable or unwilling to abide by a contractual usage limit, Customer will execute an Order Form for additional quantities of the applicable Hosted Services promptly upon Velocify's request, and/or pay any invoice for excess usage delivered to Customer by Velocify.

2.6. No Implied Rights or Licenses. Licenses grant no ownership rights to Customer. No rights or licenses are granted to Customer or Users hereunder other than the Licenses expressly set forth herein. In providing the Hosted Service, Velocify utilizes (i) certain audio and visual information, documents, software and other works of authorship and (ii) other technology, software, products, processes, algorithms, user interfaces, knowhow and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material and information used or provided by Velocify in providing the Hosted Service (collectively "**Velocify Technology**"), which are covered by intellectual property rights, as between the parties, owned by or licensed to Velocify. Subject to the limited rights expressly granted hereunder, Velocify reserves all rights, title and interest in and to the Hosted Service, Documentation, and Velocify Technology, including all related intellectual property rights.

2.7. Free Trials. If Customer accesses the Hosted Service for a free trial, the Hosted Service will be available to Customer on a trial basis free of charge until the earliest to occur of (a) the end of the free trial period for which Customer registered, (b) the start date of any purchased Hosted Service subscriptions ordered by Customer, or (c) termination by Velocify in Velocify's sole discretion. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. ANY CUSTOMER DATA CUSTOMER ENTERS INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR CUSTOMER, DURING A FREE TRIAL WILL BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASES APPLICABLE UPGRADED SERVICES, OR EXPORTS SUCH CUSTOMER DATA, BEFORE THE END OF THE TRIAL PERIOD. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY.

2.8. Professional Services; Training. Professional services, such as custom development, implementation, configuration and training services, provided to Customer shall be provided pursuant to a statement of work incorporating the terms of this Agreement, and setting forth the scope of work and applicable Fees, which shall be executed by authorized representatives of both Parties ("**Statement(s) of Work**"). Commercial terms related to the Statement of Work shall be in the Order Form and/or in the Statement of Work. Unless otherwise expressly set out to the contrary in the relevant Statement of Work, all results of professional services shall be owned solely by Velocify.

3. Term; Suspension; Termination.

3.1. Term of Agreement. The term of this Agreement (the "**Term**") commences on the Effective Date and continues until the term of all subscriptions under all Order Forms have either expired or have been terminated.

3.2. Term of Purchased Subscriptions. The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at Velocify's applicable list price in effect at the time of the applicable renewal.

3.3. Termination. A party may terminate this Agreement for cause (i) (subject to the following sentence) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Notwithstanding the foregoing, if Velocify believes that Customer's access to the Hosted Service adversely impacts the operation of the Hosted Service, Velocify may investigate and, upon notice to Customer, immediately suspend Customer's License(s) and subscription(s) while conducting such investigation. Velocify will notify Customer of the investigation results and Velocify, in addition to all other available remedies, may terminate Customer's License and/or this Agreement if cause is found.

3.4. Refund or Payment upon Termination. If this Agreement is terminated by Customer in accordance with Section 3.3, Velocify will refund any prepaid Fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Velocify in accordance with Section 3.3, Customer will pay any unpaid Fees covering the remainder of the term of all Order Forms. In no event will termination relieve Customer of any obligation to pay any Fees payable for the period prior to the effective date of termination.

3.5. Effect of Suspension/Termination. Upon termination of this Agreement for any reason: (i) Customer shall remain liable for all Fees, charges and any other obligations it has incurred under this Agreement through the effective date of termination, and (ii) all of Customer's Licenses and other rights under this Agreement shall immediately terminate. The provisions of this Agreement related to payment, confidentiality, intellectual property rights/ownership, indemnification, disclaimers of warranties and limitations of liability, dispute resolution, and other provisions that by their nature would survive, shall survive the expiration or any termination of this Agreement. Upon suspension by Velocify of Customer's License or any subscription, in whole or in part, for any reason: (a) Fees will continue to accrue for any subscriptions and/or portion of the Hosted Service that remains accessible by Customer, notwithstanding the suspension; and (b) if the suspension results from Customer's breach of this Agreement, Customer shall remain liable for all Fees, charges and any other obligations which accrue through the duration of suspension with respect to the inaccessible portions of the Hosted Service.

3.6. Data Extraction and Deletion. CUSTOMER SHALL HAVE THIRTY (30) CALENDAR DAYS AFTER TERMINATION OF THIS AGREEMENT IN WHICH TO EXTRACT CUSTOMER DATA FROM ITS ACCOUNT. AFTER SUCH 30-DAY PERIOD, UNLESS LEGALLY PROHIBITED, VELOCIFY MAY (BUT IS NOT



OBLIGATED TO) DELETE SUCH CUSTOMER DATA, AT ANY TIME FOLLOWING SUCH 30-DAY PERIOD. VELOCIFY SHALL HAVE NO LIABILITY FOR ANY DAMAGES, LIABILITIES OR LOSSES (INCLUDING, WITHOUT LIMITATION, LOSS OF DATA OR LOST PROFITS) THAT MAY RESULT FROM VELOCIFY'S DELETION OF ANY CUSTOMER DATA PURSUANT TO THIS SECTION.

4. Fees.

4.1. Generally. Customer will pay all fees ("Fees") in the amounts and on net payment terms as specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Hosted Services purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased (including of User seats) cannot be decreased during the relevant subscription term. On each anniversary of a particular subscription term, Velocify may increase Fees with respect to such subscription automatically, without notice, by no more than three percent (3%) of the then-current rate, unless otherwise agreed by the parties in writing. All amounts payable by Customer under this Agreement will be made without setoff or counterclaim and without deduction or withholding. Customer is solely responsible for maintaining accurate billing and contact information with Velocify and notifying Velocify with updates thereto. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date.

4.2. Disputes. Any disputes relating to amounts stated in a Velocify invoice must be described in writing and submitted to Velocify by Customer within thirty (30) days following Customer's receipt of such invoice. Customer must identify the specific charges that are being disputed and submit detailed data and information in support of the dispute. Should Customer dispute a portion of an invoice, Customer shall remain obligated for timely payment of undisputed amounts. Velocify will not exercise Velocify's rights under Section 4.3 if Customer timely disputes the applicable charges reasonably and in good faith and cooperates with Velocify diligently to resolve the dispute.

4.3. Failure to Pay. In the event Customer fails to pay amounts due and payable hereunder, Customer agrees to pay all costs incurred by Velocify in connection with its collection of delinquent payments, including attorney's fees and court costs. In addition, in the event of Customer's failure to pay amounts due and payable hereunder, unless the unpaid amount is subject to a good faith dispute and Customer has provided notice of such dispute in accordance with Sections 4.2 and 12.2, Velocify shall have the right to suspend use of the Hosted Service, without liability to Customer, until such amounts are paid in full. Customer will continue to be charged for User Licenses during any period of suspension. In addition to all other remedies available to Velocify, Velocify shall be entitled to receive interest of 1% per month on any delinquent amount, or the maximum permitted by law, whichever is less.

5. Taxes. Customer shall be responsible for all sales taxes, use taxes, withholding taxes, value added taxes and any other similar taxes imposed on the transactions contemplated by this Agreement ("Taxes"), excluding Taxes based upon Velocify's net income. When Velocify has the legal obligation to pay or collect such Taxes, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Velocify with a valid tax exemption certificate.

6. Service Level. Velocify shall host, support and operate the Hosted Service in accordance with the terms and conditions set forth on Annex A, Service Level & Technical Support Agreement, attached hereto ("SLA").

7. Third Party Applications. Velocify will provide Customer access to certain Third Party Applications. Some but not all Third Party Applications may be specifically called out in an Order Form. Velocify hereby grants Customer a limited, non-exclusive, non-transferable, revocable, non-sub-licensable sub-license to access and use such Third Party Applications, solely in conjunction with the Hosted Service for the purpose specified in this Section, and solely in accordance with the terms and conditions of this Agreement. By providing Third Party Applications as a part of the Hosted Service, Velocify does not guarantee the continued availability of such Third Party Applications and Velocify may terminate Customer's access to any of the Third Party Applications for any reason whatsoever immediately upon written notice. The Third Party Applications, and all data generated by Third Party Applications, are provided "AS IS" without warranty by Velocify or any third party of any kind. Neither Velocify nor its third party licensors shall be responsible or liable for any errors, omissions, delays or losses resulting from any use of the Third Party Applications or any data input by Customer or Velocify on behalf of Customer.

8. Feedback; Customer Data; Data Security & Backup.

8.1. Customer grants to Velocify a non-exclusive, royalty-free, worldwide, perpetual, irrevocable and fully transferable right and license to use or incorporate into the Hosted Service any suggestions, ideas, enhancement requests, feedback, recommendations or other information ("Feedback") provided by Customer or its Users and to reproduce, distribute, modify create derivative works of, publicly perform, publicly display and sublicense such Feedback in connection with the operation of the Hosted Service.

8.2. All Customer Data shall remain the sole and exclusive property of Customer. Velocify may make such Customer Data non-personally identifiable, such as by aggregating the Customer Data with information about other customers and leads, or removing characteristics that make the information personally identifiable to Customer ("de-personalized"). Customer hereby grants to Velocify a royalty-free, worldwide, perpetual, irrevocable and fully transferable right and license to use (i) Customer Data (including, without limitation, personally identifiable information that may be contained therein) in connection with Velocify's operation of the Hosted Service and performance of its obligations under this Agreement, and (ii) de-personalized Customer Data to create and develop analytical and statistical analysis relating to the use of the Customer Data ("Velocify Analytical Data"). Customer hereby authorizes Velocify to make any commercial use of the Velocify Analytical Data including, without limitation, sharing such Velocify Analytical Data with third parties.

8.3. Velocify will use commercially reasonable security measures to protect Customer Data against unauthorized disclosure or use. Velocify shall backup all Customer Data at a secure facility operated in accordance with generally accepted industry standards.

9. Warranty and Disclaimer.

9.1. Limited Warranty. Velocify warrants only that, to its knowledge (i) the Licensed use of the Hosted Service hereunder does not infringe, misappropriate or violate any intellectual property rights of any third party; (ii) the Hosted Service does not contain Malware inserted by Velocify; and (iii) the Hosted Service will perform materially in accordance with the Documentation. For any breach of this limited warranty, Customer's exclusive remedies are, for breaches of (i), those remedies described in Section 11.2, and for breaches of (ii) and (iii), those remedies described in Sections 3.3 and 3.4.

9.2. DISCLAIMER. THE SERVICE AND THE VELOCIFY TECHNOLOGY (OTHER THAN AS SET OUT IN 9.1) AND THIRD PARTY APPLICATIONS ARE PROVIDED "AS IS." CUSTOMER ASSUMES FULL RESPONSIBILITY FOR USE OF THE SERVICE. VELOCIFY AND ITS LICENSORS DO NOT WARRANT THE SERVICE OR THIRD PARTY APPLICATIONS WILL BE ERROR FREE, WILL MEET CUSTOMER REQUIREMENTS OR EXPECTATIONS, OR THE PERFORMANCE OR THE RESULTS THAT MAY BE OBTAINED BY USING THE SERVICE OR THIRD PARTY APPLICATIONS. VELOCIFY AND ITS LICENSORS



MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VELOCIFY AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. VELOCIFY AND ITS LICENSORS DO NOT WARRANT THAT THE SERVICE OR THIRD PARTY APPLICATIONS WILL BE UNINTERRUPTED OR (OTHER THAN AS SET OUT IN 9.1) FREE OF HARMFUL COMPONENTS, OR THAT THE CUSTOMER DATA STORED WITHIN THE SERVICE WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. WITH THE EXCEPTION OF THE SLA, VELOCIFY SHALL NOT BE RESPONSIBLE FOR ANY SERVICE INTERRUPTIONS INCLUDING, WITHOUT LIMITATION, POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS. VELOCIFY'S LICENSORS SHALL HAVE NO RESPONSIBILITY HEREUNDER.

10. Limitation of Liability.

10.1. In no event will either party be liable to the other party for any indirect, special, incidental, consequential damages of any type or kind (including, without limitation, loss of data, revenue, the cost of substitute technology, profits, use or other economic advantage); and

10.2. except with respect to the fees to be paid by customer to Velocify under section 4 (or otherwise under any mutually executed order form), neither party's aggregate liability to the other party for any claim arising from or related to this agreement shall, in any case, exceed US\$150,000.

Some jurisdictions prohibit limiting liabilities, so in certain jurisdictions these limitations may not apply. The limitations set forth in Sections 10.1 and 10.2 above **shall not apply** with regard to (a) damages arising from unauthorized use or disclosure of Confidential Information or either party's infringement or misappropriation of the other party's intellectual property rights (e.g., breach of Section 2); (b) bodily injury or tangible and/or real property damages to the extent such injury or such damage arises from or is related to the negligence acts or omissions of such party's personnel in connection with professional services; (c) breach of Section 4; (d) breach of applicable law; or (e) damages arising from either party's intentional or willful misconduct.

11. Indemnification.

11.1. By Customer. Customer agrees to defend, indemnify and hold Velocify (including its affiliates, licensors and business partners, and its and their respective officers, directors, employees, agents and representatives, collectively, a "**Velocify Indemnified Party**"), harmless against any and all liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred in connection with third party claims, demands, suits or proceedings (collectively, "**Claims**") made or brought against a Velocify Indemnified Party relating to or arising out of (i) Customer's use of the Hosted Service and/or any Third Party Applications in a manner not expressly authorized by this Agreement; or (ii) Customer Data or the use of Customer Data.

11.2. By Velocify. Velocify agrees to indemnify, defend and hold Customer, (including its officers, directors, employees, agents and representatives, collectively, a "**Customer Indemnified Party**") harmless from and against any Claim that the Licensed Use of the Hosted Service infringes the intellectual property right of a third party.

Notwithstanding the foregoing, in no event shall Velocify have an indemnification obligation for Claims to the extent such Claims arise from (1) Customer's use of the Hosted Service in a modified form or in combination with materials (including, without limitation, Customer Data) not furnished by Velocify or (2) where the Hosted Service would not without combination with materials not furnished by Velocify give rise to any such Claim. If, in Velocify's reasonable determination, the Hosted Service is likely to become the subject of an injunction preventing its use as contemplated by this Agreement, Velocify may, at its option and at its expense: (x) procure the right for Customer to continue using the Hosted Service, (y) replace or modify the Hosted Service so that it becomes non-infringing, or (z) terminate Customer's License hereunder with respect to the allegedly infringing portion of the Hosted Service and provide a pro-rated refund of any prepaid Fees. THIS SECTION 11.2 STATES VELOCIFY'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO ANY THIRD PARTY CLAIM OF INFRINGEMENT OF SUCH THIRD PARTY'S INTELLECTUAL PROPERTY BROUGHT AGAINST A CUSTOMER INDEMNIFIED PARTY.

11.3. The indemnification obligations above are conditioned upon the indemnified party (a) promptly giving written notice of the Claim to the indemnifying party; (b) giving the indemnifying party sole control of the defense and settlement of the Claim (provided that the indemnifying party may not settle any Claim unless such settlement unconditionally releases the indemnified party of all liability); and (c) providing to the indemnifying party at the indemnifying party's cost all reasonable assistance.

12. Miscellaneous.

12.1. Entire Agreement. This Agreement, together with any outstanding Order Forms and written addendums entered into on even date herewith, contain the sole and entire agreement and understanding between Velocify and Customer with respect to the entire subject matter hereof. Any and all prior or contemporaneous agreements (including any prior license agreement with a current term), discussions, negotiations, commitments and understandings, whether oral, written or otherwise, related to the same subject matter are hereby superseded and/or merged herein. Electronic signatures and click-through acknowledgements by Customer or Customer's agents that comply with applicable law are deemed original signatures.

12.2. Notices. All notices under this Agreement shall be in writing and shall be delivered to Velocify at 222 N. Sepulveda Blvd., Suite 1800, El Segundo, CA 90245, Attn: General Counsel, or, to Customer, at the address set forth in the Order Form, by registered mail-return receipt requested, personal delivery, facsimile or by email. Notice shall be deemed to have been given upon: (i) personal delivery; (ii) five (5) business days after mailing; (iii) upon sending by confirmed facsimile or by email provided a confirming copy of such notice is mailed as provided herein on the day of dispatch.

12.3. Governing Law and Jurisdiction: This Agreement shall be governed by and construed exclusively in accordance with the laws of the State of California, without regard to its conflicts of laws provisions. Jurisdiction and venue for any dispute hereunder shall be in the state and federal courts located in Los Angeles County, California, and each party hereby irrevocably submits to the exclusive jurisdiction of such courts.

12.4. Severability; Amendments. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the provisions shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in full force and effect. Velocify may modify the terms of this Agreement by posting the revised Agreement on the Hosted Service. Customer's continued use of the Hosted Service shall constitute acceptance of such revised Agreement.

12.5. Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of the parties and their respective successors and assigns.



12.6. Relationship of the Parties; No Third Party Beneficiary. The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture. There are no third party beneficiaries to this Agreement.

Attachments that follow:

Annex A – Service Level & Technical Support Agreement (“SLA”)

Annex B – Email and Short Message Service (“SMS”) Functionality

Annex C - Telephony “Dial-IQ” Functionality



Annex A -- Service Level & Technical Support Agreement (“SLA”)

Velocity hereby agrees to the following SLA with respect to provision of the Hosted Service to Customer:

1. System Availability. Velocity will use commercially reasonable efforts to maintain an average monthly system availability for the Hosted Service as follows:

1.1. The availability percentage of the Hosted Services, calculated as set forth in paragraphs 1.2-1.4 below, across all Order Forms in the aggregate (the “**Availability Percentage**”), will be 99.7% or above.

1.2. In the event that the Availability Percentage for a particular calendar month is less than 99.7%, the Fees paid for a license to access the Hosted Service (excluding Fees paid for any other reason)(“**Service Fees**”) for the month in question will be reduced by the appropriate proportion shown in the following table, such reduction to be credited (“**Service Credits**”) to Customer by a reduction in the Service Fees for the calendar month following the calendar month in which the failure to achieve the Availability Percentage occurred.

Availability Percentage	Service Credit Percentage (% reduction) in monthly Service Fees
99.7% or above	0%
less than 99.7 but equal to or more than 99.3	10%
less than 99.3 but equal to or more than 98	15%
less than 98 but equal to or more than 97	25%
less than 97 but equal to or more than 95	50%
less than 95	75%

1.3. Other than the termination right in paragraph 1.6 of this SLA, Customer’s right to receive Service Credits will be Customer’s sole and exclusive remedy for Velocity’s failure to satisfy the Availability Percentage. In the event Customer is not current in its payment obligations when an Availability Percentage failure occurs, remedies will accrue, but Service Credits will not be issued until Customer becomes current in its payment obligations.

1.4. For the purpose of calculating the Availability Percentage, the Hosted Services are to be considered as “**Available**” (and “**Unavailable**” otherwise) when the Hosted Service is accessible and available for use by all Customer’s Users as contemplated by this Agreement. However, the Hosted Services will not be considered “Unavailable” if a particular User or group of Users are unable to use and access the Hosted Service due to either (i) their own act(s) or omission(s) to act in accordance with this Agreement and the Documentation, including (without limitation) loss of sign in credentials or Hosted Service suspension due to nonpayment of Fees, or (ii) problems/failures with such Users’ own computer network, facilities, equipment or environment not caused by any act or omission of Velocity.

The Availability Percentage is measured over a calendar month and is calculated by:

- 1.4.1. calculating the total of all the minutes during the calendar month in question (“**Total Minutes**”);
- 1.4.2. deducting any periods of Allowed Downtime (as defined below) from the Total Minutes to produce the expected availability for the calendar month in question (“**Expected Availability**”);
- 1.4.3. deducting from the Expected Availability the number of minutes during the calendar month for which the Hosted Services were not Available due to any causes other than Allowed Downtime (such number of minutes being the “**Unplanned Downtime**”) to produce the actual availability for the month in question (“**Actual Availability**”); and
- 1.4.4. dividing the Actual Availability by the Expected Availability, multiplying by one hundred (100), and rounding the result to two decimal places.

For purposes of example and clarity only, if for a particular calendar month:

Total Minutes = 43,800 min	Expected Availability = 43,668.60 min	Actual Availability = 43,648.6 min
Allowed Downtime = 131.4 min	Unplanned Downtime = 20 min	Availability Percentage = $[43,648.6 / 43,668.6 = .9995] * 100 = 99.95\%$

1.5. Specifically excluded from Expected Availability in the calculation above are Hosted Service outages or downtime (“**Allowed Downtime**”) arising from:

- 1.5.1. causes outside of Velocity’s Immediate Control (as defined below),
- 1.5.2. a service interruption caused by an outside third party security threat, network intrusions or denial of Hosted Service attacks, or any other force majeure event, until such time as such threat or event, or the outage/downtime caused thereby, has been resolved;
- 1.5.3. Customer’s information content or application programming, acts or omissions of Customer, its Users or its agents, or failures of computer network, facilities, equipment or environment controlled by Customer;
- 1.5.4. any type of emergency maintenance lasting no longer than two (2) hours that is necessary to protect the security of Customer Data that has been notified by Velocity at least two (2) hours prior to its commencement to a representative of Customer; and/or
- 1.5.5. any type of scheduled maintenance that has been notified by Velocity at least forty-eight (48) hours prior to its commencement to a representative of Customer.



Velocify will provide Customer with technical support contact information to allow Customer to report any incident of Unplanned Downtime. “**Immediate Control**” shall mean Supplier’s network services terminating at the datacenter located router that provides the outside interface of each of Supplier’s WAN connections to its backbone providers and hardware and software provided and managed by Supplier. Supplier shall use commercially reasonable efforts to work with the corresponding vendor to minimize the disruption due to communication line downtime or other outage outside of Supplier’s Immediate Control.

1.6. In the event Velocify fails to achieve the Availability Percentage (i) for four (4) consecutive calendar months, or (ii) for five (5) or more calendar months during any twelve (12) consecutive calendar month period, Customer may terminate its subscriptions, and receive a pro-rated refund of any prepaid fees, for the affected Hosted Service by providing Velocify with thirty (30) day written notice within thirty (30) days after the failure occurs.

1.7. This SLA sets forth Customer’s sole and exclusive remedies for Velocify’s breach of this SLA, including Velocify’s failure to achieve the Availability Percentage.

1.8. **SLA Exclusions.** Velocify’s obligations under this SLA will not apply if:

1.8.1. the Hosted Service is not used by Customer and Customer’s Users in accordance materially with the Agreement or Documentation,

1.8.2. any failure to achieve the Availability Percentage is caused by Customer, or by any third party product or service not provided or authorized by Velocify; or

1.8.3. Customer’s access to the Hosted Service was provided for evaluation purposes only and/or no Fee.

2. Technical Support – Error Reporting and Resolution.

2.1. **Definitions.** Unless defined otherwise herein, capitalized terms used in this SLA shall have the same meaning as set forth in Section 1 of the Agreement.

2.1.1. “**Error**” means any failure of the Hosted Service to substantially conform with the Documentation that results in an error, defect or failure, whether full or partial, in the functioning of the Hosted Service, the Priority of which will be set by Velocify. “**Error Correction**” means a fix, patch or other modification to correct an Error.

2.1.2. “**Priority A Error**” means an Error that renders the Hosted Service inoperative or causes a complete failure of the Hosted Service.

2.1.3. “**Priority B Error**” means an Error that substantially degrades the performance, or materially restricts Customer’s use, of the Hosted Service.

2.1.4. “**Priority C Error**” means an Error that causes only a non-material impact on Customer’s use of the Hosted Service.

2.2. **Error Reporting, Technical Support.** Velocify’s standard technical support is provided to customers via email and/or posting to Velocify support sites Monday through Friday, 6AM to 6PM PST (excluding nationally recognized holidays). Technical support is limited to assistance with (i) Error reporting, (ii) Error resolution, (iii) initial Hosted Service configuration, and (iv) minor issues related to ongoing usage of the Hosted Service. Additional training, escalated support and professional services consulting assistance is available for mutually agreed-upon consideration.

2.3. **Error Resolution.** When reporting an Error, Customer must provide Velocify with reasonably sufficient detail to allow Velocify to assign a Priority level and make an initial assessment. Customer shall provide information reasonably requested by Velocify. Velocify shall take commercially reasonable efforts to identify, assess, assign and correct/resolve Errors in a timely fashion, as follows:

Priority A	assess within five (5) hours of report - provide a plan for resolution within forty-eight (48) hours of report
Priority B	assess within twenty-four (24) hours of report - provide a plan for resolution as soon as commercially practicable
Priority C	assess within forty-eight (48) hours of report - provide a plan for resolution as soon as commercially practicable



Annex B -- Email and Short Message Service (“SMS”) Functionality

This Annex B applies if Customer purchases Email and SMS Functionality under an applicable Order Form.

1. Email and Short Message Service (“SMS”) Functionality.

1.1. Volume. Email sent by Users using the Hosted Service is divided into two categories; internal email sent to Users within the Hosted Service (“**Internal Email**”) and external emails sent to third party leads (“**External Email**”).

INTERNAL EMAIL VOLUME:	Unrestricted volume of emails sent via Hosted Service from/by a User to another valid User email address
EXTERNAL EMAIL VOLUME:	Users may send a limited (other than as stated below) number of monthly emails to valid third party email addresses associated with leads listed in Customer’s account. Such limit shall be stated on each Order Form. Each monthly limit resets on the 1st day of each calendar month; any unused portion of the monthly limit does not rollover to successive months. Additional monthly email volume may be purchased per Velocify’s standard pricing. If an Order Form sets forth an “ Unlimited Messaging ” allowance, each User account may send up to 10,000 SMS Messages and another 10,000 email Messages per User account per month without additional charge.
SMS VOLUME:	Customer may purchase blocks of 1,000 SMS messages per Velocify’s standard pricing. As used herein: “ message ” means (1) the posting of the phone number to the Operator by the Customer, (2) an attempt to send an SMS to a cell phone, or (3) a message received from a lead in reply to a message originated by Customer (SMS message blocks do not expire but remaining messages will not be credited back at the expiration of this Agreement); “ Operator ” means the wireless carrier to which Velocify has commercial connectivity; “ Subscriber ” means the user on a wireless telecommunications network that sends or receives messages via a wireless device. Subscriber is the consumer of the messaging services provided by Velocify and the Customer as enabled by the Operator.

1.2. Content Restrictions; No Guarantees. All emails and SMS messages (“**Messages**”) sent, or caused to be sent, by Customer to or through the Hosted Service shall be 100% opt-in. Customer shall not (itself, or through a third party) transmit, distribute, handle, send or deliver Messages that: (1) are unsolicited bulk Messages; (1) contain invalid, misleading, or forged headers or subject lines; (2) contain invalid domain names; (3) employ any technique to otherwise misrepresent, hide or obscure the point of origin or the transmission path; (4) use any deceptive addressing; (5) use a third party’s internet domain name, or are relayed from a third party’s equipment, without permission of the third party; (6) are otherwise deceptive, false, misleading or fraudulent; (7) are threatening, abusive, harassing, or defamatory; (8) are invasive of another’s privacy; (9) contain obscene or indecent material; (10) infringe any third party’s intellectual property right(s); (11) violate export control laws and/or regulations; (12) violate the usage standards or rules of any applicable ISP or news or user group; (13) are legally actionable by private parties; and/or (14) are in violation of any applicable local, state, national or international law or regulation, including without limitation the CAN-SPAM Act of 2003, 15 U.S.C. sec. 7701 et seq. (“**CAN-SPAM Act**”). Velocify makes no guarantee with regard to successful delivery of Messages through the Hosted Service. Customer agrees that with respect to Operator communication services, all of the Messages may not be delivered; and neither Velocify nor Operator will be liable for Messages deleted or not delivered, regardless of the reason (e.g., network issues, processing or transmission errors). Customer’s Message activity is subject to all industry standard bounce-back restrictions. If Customer violates the bounce-back restrictions of any particular Internet Service Provider for spam complaints, unknown users, hard bounces (permanently undeliverable), or soft bounces (temporarily undeliverable), Velocify may suspend or terminate Customer’s access to the Hosted Service. Customer shall adhere to all policies of the relevant Operator(s), and other policies that may be issued by the Mobile Marketing Association. A breach of this paragraph shall be a material breach of this Agreement and shall result in immediate and irreparable damage to Velocify and Operator; Customer shall be responsible for all resulting costs (including attorneys’ fees) and damages. Velocify accepts no liability or obligations for changes to content executed by Operators. Use of the Hosted Service involves transmission through Operators or companies other than Velocify and messages and transactions may not be private in certain circumstances, and may be changed by those third parties to conform and adapt to requirements of their networks and devices. Velocify assumes no responsibility for timeliness, deletions, or failure to store any Message or transaction. If Velocify believes that Customer has breached this Section, Velocify, in addition to its other remedies, may take such action as it deems appropriate, including, e.g., requiring Customer to use a third-party email provider at an additional charge, or blocking Customer’s use of the Hosted Services’ Message functionalities.

1.3. Message Data. Velocify collects certain data generated from Message delivery transactions such as success or failure rates for transactions. Customer agrees (i) that Operators cannot guarantee the privacy of Messages, and (ii) that neither Velocify nor the Operators will be liable for any lack of privacy or security when using the Hosted Service. Customer agrees that to the extent permitted by law, Operators may intercept and disclose any transmissions over their facilities to protect their rights or property, including without limitation, to protect the efficient operation of their networks or to comply with governmental authorities.

1.4. Limitations on SMS Liability. Notwithstanding anything in this Agreement to the contrary and without limiting paragraph 1.1 above: (a) the services provided by any Operator by means of a wireless network or the Internet, are “as is”, “where is” and “when available”; (b) Velocify is not responsible for the availability of any Operator, or the availability and/or performance of the wireless network or the Internet; and (c) Velocify is not responsible for any damages or costs Customer suffers or incurs as a result of any instructions given, actions taken or omissions made by Customer.



Annex C -- Telephony "Dial-IQ" Functionality

This Annex C applies if Customer purchases Telephony Functionality under an Order Form for Velocify's Dial-IQ functionality.

2. EMERGENCY SERVICE NOT PROVIDED. Customer agrees that Velocify, through the Hosted Service or otherwise, does not provide Emergency Service. "Emergency Service" means services that connect a user to emergency services personnel or a public safety answering point, pursuant to applicable regulatory requirements (e.g., in the USA, by dialing "911" on a wired or a wireless telephone). Hosted Services are not intended to, and do not, dial "911" or any other emergency telephone numbers.

3. Regulatory Compliance. Customer covenants to comply with (and to use the Hosting Service in compliance with) all federal, state and/or local law (including, e.g. 47 USC §227) related to providing, selling, licensing and delivering information or telecommunications services and products, and/or to the use of telephones, email, fax, automated telephonic equipment, automatic telephone dialing systems, artificial or prerecorded voice messages, and other telephony and telecommunications products and services. Customer is solely responsible for breach of the foregoing; such breach may result in substantial penalties, and Customer should consult with Customer's own counsel with respect to its compliant use of the Hosted Service. Legal limitations applicable to Customer's particular use of the Hosted Service may include, e.g.: commercial solicitations; advertisements; delivering artificial or prerecorded telephonic messages to cellular phones or paging systems without the prior consent of the called party; and restrictions on the time of day in which calls are permissible. To assist Customer in complying with certain laws, rules, and regulations relevant to direct marketing and to help Customer determine if a particular phone number is a wireless phone number, Velocify may obtain and make available as part of the Hosted Services via a third party service provider standard third party wireless number lists (the "Wireless Lists"). If Velocify provides Wireless Lists, Customer may submit a phone number to Velocify, in a manner and format to be determined by Velocify, to check against the Wireless Lists. Velocify makes no representations, warranties or covenants relating to the availability of the Wireless Lists, if at all. Customer agrees that Velocify makes available the Wireless Lists to assist Customer in its compliance efforts relevant to direct marketing, but Customer's actual use of the Wireless Lists could generate results that are not compliant with such laws, due to inaccuracies in the Wireless Lists as provided by their publishers. VELOCIFY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY WARRANTY WITH RESPECT TO THE WIRELESS LISTS OR THE EFFICACY OF USING WIRELESS LISTS TO ENSURE CUSTOMER'S COMPLIANCE WITH ANY LAW, RULE OR REGULATION. WITHOUT LIMITING THE FOREGOING, VELOCIFY DOES NOT WARRANT OR GUARANTEE THAT THE WIRELESS LISTS WILL BE ACCURATE OR ERROR-FREE OR THAT THE USE OF SUCH WIRELESS LISTS WILL ACCURATELY INDICATE WHETHER ANY PHONE NUMBER SUBMITTED BY CUSTOMER TO VELOCIFY IS OR IS NOT A WIRELESS NUMBER. Velocify shall have no responsibility or liability to Customer, under this Agreement or otherwise, with respect to (x) any inaccuracies or errors in the Wireless Lists; and (y) Customer's use of the results obtained from accessing the Wireless Lists. Customer agrees to indemnify Velocify from and against any claims, liabilities or expenses (including attorneys' fees) incurred by Velocify based upon Customer's use of the Hosted Service in any manner not in compliance with federal, state or local laws (including against any private right of action thereunder). Customer is solely responsible for obtaining the consent of or a release from those potential recipients to whom Customer sends communications or Messages using the Hosted Service. Customer agrees to periodically review the list of recipients to be contacted, to contact only those persons who the Customer is legally permitted to contact from Customer Data, and only in the manner permitted, under federal, state and local law, and to delete those recipients that no longer wish to receive communications from Customer. If Customer is advised by any party that they do not wish to receive communications from Customer, then Customer agrees to promptly add those parties to its internal company-specific Do Not Call List, and refrain from calling such parties. If Velocify determines, in its sole discretion, that the receipt of communications via the Hosted Service is not consensual, or violates any federal, state and/or local rule and regulation, or is harassing to consumers or businesses, Velocify may suspend the Dial-IQ service for Customer.

4. Dial-IQ Warranty Disclaimer. Notwithstanding anything herein to the contrary: (a) Dial-IQ is provided on an "as is" and "as available" basis; (b) Velocify does not warrant that Dial-IQ will be uninterrupted or that communications will be delivered and disclaims all warranties, expressed or implied, including, but not limited to, implied warranties or merchantability or fitness for a particular purpose in relation to Dial-IQ; and (c) Dial-IQ may be inaccessible or inoperable for reasons outside of Velocify's control including, e.g., Customer equipment malfunctions; or service interruptions caused by independent telecommunication providers.

5. Dial-IQ Call Charges; Recording/Storage; Deletion. Customer shall pay for each telephony connection made to another party utilizing DialIQ (a "Call") at Velocify's standard pricing. Calls are charged in twenty second increments. Calls involving a connection to multiple parties shall be charged as multiple Calls. Charges for Call Recording include the recording of a Call and retention of that recording for six months; on a rolling six-month basis, all recordings will be automatically deleted without notice.

6. Dial-IQ Excessive Use. Usage of Dial-IQ will not exceed two thousand minutes of calling time per license each month. In circumstances where Customer exceeds such limit, Velocify may charge Customer for excess minutes at five cents per minute.

7. Safe Harbor Message. Dial-IQ multi-line dialing Customers covenant to record and maintain a safe harbor message that complies with the FTC "Telemarketing Sales Rule", stating the name and number of the seller on whose behalf a call is placed.