

MASTER SERVICE AGREEMENT

1. Definitions

1.1 **"Affiliate"** means when used with respect to one of the parties hereto, any legal entity or entities directly or indirectly controlling, controlled by, or under common control with a party. The term **"control"** as used in the immediately preceding sentence means the right to exercise, directly or indirectly, more than 50% of the voting rights attributable to the shares, partnership interests, membership shares or similar evidences of ownership of such controlled entity. Unless otherwise explicitly set forth, all reference to a party herein shall include such party's Affiliates.

1.2 **"Application Service"** means the service by which the Software and Customer Data hosted or stored on servers or other equipment of LoyaltyExpress or LoyaltyExpress's third-party hardware host (a "Third Party Host") are made available through the Internet for use by the Customer. For purposes of this Agreement all references to the Application Service include both hardware and other devices owned or controlled either by LoyaltyExpress or a Third Party Host. **"Software"** means the computer programs listed in an SOW made available to Customer in only machine readable object code, Documentation and technological know-how embodied in or relating to such programs, and all derivatives, enhancements, updates, releases, improvements, additions, corrections and/or modifications thereto. Application Service includes any Third Party Materials provided by LoyaltyExpress pursuant to this Agreement.

1.3 **"Authorized Users"** means collectively Customer's Affiliates, Customer Users and Non-Customer Users authorized by Customer to use and access the Application Service in accordance with the terms and conditions of this Agreement and an applicable SOW, including, without limitation, Customer Affiliates and their respective employees, consultants, contractors or third party service providers, outsourcers, carriers, professional advisors and agents, irrespective of country or world region, for whom subscriptions to the Application Service have been ordered, and who have been supplied user identifications and passwords by Customer (or by LoyaltyExpress at Customer's request).

1.4 **"Creative Work Product Deliverable"** means a work of authorship specifically defined within a Statement of Work as a Creative Work Product Deliverable that is produced, created and delivered by LoyaltyExpress to Customer in connection with the performance of the Professional Services including all modifications, upgrades or enhancements to Customer Data, but in each case excluding the Application Service, LoyaltyExpress Tools, LoyaltyExpress intellectual property rights, and the skill and knowledge of LoyaltyExpress resulting from the provision of the Professional Services and Application Service.

1.5 **"Customer Data"** means all Customer and Customer Affiliate data, information, content, materials and Third Party Materials that Customer or any Customer Affiliate provides to LoyaltyExpress pursuant to this Agreement.

1.6 **"Customer User"** means individuals within Customer's organization, including employees and/or contractors, who are authorized by Customer to use the

Application Service, for whom subscriptions to the Application Service have been ordered, and who have been supplied user identifications and passwords by Customer (or by LoyaltyExpress at Customer's request).

1.7 **"Documentation"** means the instructional and operational manuals for the Software, and all improvements, additions, corrections and modifications thereto.

1.8 **"LoyaltyExpress Tools"** means any pre-existing materials or other intellectual property rights in the Creative Work Product Deliverables which are owned by or licensed to the LoyaltyExpress which pre-date or are created independently of this Agreement, which are not created specifically for Customer and which are intended for general use in respect of the LoyaltyExpress's business, and any changes, modifications or enhancements made thereto during the term of this Agreement. Such pre-existing materials or other intellectual property rights include information, web pages, graphic files, audio or video files, text files, scripts, software, code and other components used by LoyaltyExpress or Customer to create a Creative Work Product Deliverable.

1.9 **"Malicious Code"** means, by way of example and not limitation, any key, node, lock, time-out (other than for password security purposes), backdoor, booby trap, trapdoor, Trojan horse, data-scrambling device (other than industry-approved encryption), virus, worm, time bomb, or any other program or code that allows unauthorized access to or interference with hardware or software of the other party.

1.10 **"Minimum Commitment"** means the amount of monthly fees specified as the "Minimum Commitment" in the applicable SOW.

1.11 **"Non-Customer User"** means business partners of Customer who are authorized by Customer to use the Application Service, for whom subscriptions to the Application Service have been ordered, and who have been supplied user identifications and passwords by Customer (or by LoyaltyExpress at Customer's request).

1.12 **"Professional Services"** means installation, configuration, implementation, design, consultation, training, and other professional services provided by LoyaltyExpress to Customer as more fully set forth in the applicable Statement of Work that describes the professional services (including, without limitation, training in the use and application of the Application Service, modifications, customizations or other changes to the Software for the benefit of Customer) and provides the details necessary to determine deliverables, acceptance and testing criteria, and any milestones or other benchmarks and terms and conditions, that the parties may agree upon writing.

1.13 **"Statement of Work" or "SOW"** means one or more statements of work, schedules, orders or similar documents executed by the parties for the purchase of the Application Service, Professional Services, and the other services generally available from LoyaltyExpress in connection with the Application Service, and that reference this Agreement. Upon mutual execution of Statement of Work, such Statement of

Work is incorporated into this Agreement by reference.

1.14 **“Subscription Term”** means the period of time specified in the applicable Statement of Work during which the Application Service will be provided to Customer.

1.15 **“Third Party Materials”** means any third party content, application program, database, operating system, or other like product, which is not developed or owned by LoyaltyExpress or Customer, but which is used in the Application Service or the Software, and which have been supplied by LoyaltyExpress or Customer under a Statement of Work or otherwise under this Agreement.

2. Licenses; Application Service; and Professional Services

2.1 LoyaltyExpress hereby grants to Customer a limited, non-exclusive, non-transferable license to use, and to allow its Authorized Users to use, the Software and Documentation, for the Term, only through the Application Service upon the terms and conditions stated herein. The Customer may make copies of the Documentation only for its own internal use.

2.2 Customer hereby grants to LoyaltyExpress a non-exclusive, non-transferable license to use, upload, display, copy and store all Customer Data provided to LoyaltyExpress hereunder for storage and access through the Application Service pursuant to this Agreement. Customer agrees that it shall have sole responsibility and liability for:

- (a) acquiring any and all authorization necessary for use of Customer Data as contemplated by this Agreement;
- (b) the completeness and accuracy of all Customer Data and other materials provided to LoyaltyExpress by Customer pursuant to this Agreement; and
- (c) ensuring that Customer Data does not infringe, violate or misappropriate any patents, copyrights, trademarks, trade secrets, or any other intellectual property rights or proprietary rights of any third party.

Customer shall retain ownership of Customer Data at all times.

2.3 LoyaltyExpress shall make the Application Service available to Customer pursuant to this Agreement and applicable SOW during the Subscription Term. Customer agrees that Customer's purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by LoyaltyExpress regarding future functionality or features. The Application Service is purchased as an Authorized User subscription and may be accessed by Authorized Users only for Customer's business operations.

2.4 LoyaltyExpress will provide Professional Services either at LoyaltyExpress's premises or at Customer's premises, as the parties shall agree, and in accordance with LoyaltyExpress's then-current price list. LoyaltyExpress will provide Professional Services ordered by Customer pursuant to a SOW entered into between Customer and LoyaltyExpress; any such SOW to be set forth and made a part of this Agreement. LoyaltyExpress will provide Professional Services in a professional manner in accordance with applicable industry standards and will use reasonable efforts to complete such Professional Services in accordance with the schedule set forth

in a SOW, subject to Customer's performance of Customer's responsibilities and except as prevented by acts or occurrences beyond LoyaltyExpress's control. Customer will cooperate with LoyaltyExpress and will provide LoyaltyExpress such assistance as LoyaltyExpress may reasonably request in relation to any Professional Services. Customer will provide LoyaltyExpress accurate and complete information necessary for the implementation of any Professional Services. During the course of performance of any Professional Services hereunder, Customer agrees to notify the LoyaltyExpress project manager of any problem, deficiency or dissatisfaction with respect to such Professional Services. Customer shall so notify the LoyaltyExpress project manager as soon as any such problem, deficiency or dissatisfaction is suspected or perceived by Customer. This Agreement will govern Customer's use of any enhancements, data, and information provided by LoyaltyExpress in the course of providing any technical, installation, training or Professional Services. Any ideas, know-how, techniques, developments and software which may be developed by LoyaltyExpress, including any enhancements or modifications made to the Software and/or the Application Service, shall be the exclusive property of LoyaltyExpress. LoyaltyExpress provides Professional Services and products to other customers that are similar to the Professional Services LoyaltyExpress may provide to Customer. Nothing in this Agreement is intended or should be interpreted to prevent or inhibit LoyaltyExpress from continuing or commencing to provide such services.

3. Restrictions

3.1 The Software shall be used solely in connection with the usual business purposes of the Customer. For purposes hereof, “business purposes” shall in no circumstances include the sale or marketing, in any way whatsoever, of any of the LoyaltyExpress Confidential Information (as defined below), including but not limited to the Software. Customer shall not (i) permit any third party to access the Application Service and/or the Software except as permitted herein, (ii) create derivative works based on the Application Service and/or the Software, (iii) copy, frame or mirror any part or content of the Application Service, other than copying or framing on Customer's own intranets or otherwise for Customer's own internal business purposes, (iv) reverse engineer the Application Service and/or the Software, or (v) access the Application Service and/or the Software in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Application Service and/or the Software.

3.2 Customer agrees that it will use the Application Service and/or the Software only for lawful purposes. Customer acknowledges that LoyaltyExpress exercises no control whatsoever over the content of information entered by the Customer and it is the sole responsibility of Customer to ensure that the information it and its users transmit and receive complies with all applicable laws. Customer will be solely responsible for the contents of Customer's private and public communications, whether uploaded, posted, emailed or otherwise transmitted through the Application Service. Customer agrees to defend, indemnify and hold LoyaltyExpress harmless from and against any and all loss, expense or liability

(including reasonable attorneys' fees) awarded against, or incurred by LoyaltyExpress, as a consequence of Customer's failure to comply with any such laws or regulations and/or Customer's breach of this Section 3.2, Section 3.3 and Section 3.4.

3.3 Customer shall (i) be responsible for each of Customer's Authorized Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Customer Data and of the means by which Customer acquired Customer Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Application Service and/or the Software, and notify LoyaltyExpress promptly of any such unauthorized access or use, and (iv) use the Application Service and/or the Software only in accordance with the Documentation and applicable laws and government regulations including, without limitation, CAN SPAM laws. Customer shall not (a) make the Application Service and/or the Software available to anyone other than Authorized Users, (b) sell, resell, rent or lease the Application Service and/or the Software, (c) use the Application Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Application Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Application Service or third-party data contained therein, or (f) attempt to gain unauthorized access to the Application Service or its related systems and/or networks. In addition to the foregoing, Customer agrees that (1) access to or use of the Application Service and/or the Software by any Authorized User is subject to the terms and conditions of this Agreement, including, without limitation, the restrictions set forth hereunder, (2) any claim, demand or right of action arising from an Authorized User's use of the Application Service and/or the Software shall be brought against Customer and not LoyaltyExpress and (3) Customer will remain directly liable and responsible to LoyaltyExpress and its licensors for any violation by Customer and/or Authorized Users of this Agreement, and Customer shall indemnify and hold harmless LoyaltyExpress and its licensors and their respective officers, directors, employees and agents, from and against any and all claims, demands, costs and liabilities (including all reasonable attorneys' fees) arising out of or related to any representation, action or omission by any Authorized User inconsistent with the terms and conditions of this Agreement.

3.4 Compliance with Commercial Email Laws. Customer acknowledges that by using certain features and functions of the Application Service its Authorized Users agree to comply with LoyaltyExpress's Permission Email Policy described in the attached Schedule B. Further, Customer acknowledges and agrees that compliance with the CAN-SPAM Act of 2003 ("CAN-SPAM Act") and any other laws regulating commercial email messaging is Customer's responsibility solely. Customer will not rely upon LoyaltyExpress for compliance (other than as outlined in attached Schedule C) or for advice in complying with the CAN-SPAM Act. LoyaltyExpress disclaims all responsibility for any non-compliance by Customer with regard to the CAN-SPAM Act and any other laws regulating commercial email messaging.

3.5 Customer will perform its obligations under this Agreement and conduct business in a manner that will not reflect unfavorably on the goodwill and reputation of LoyaltyExpress.

3.6 LoyaltyExpress may suspend provision of the Application Service and Professional Services without terminating a Statement of Work or this Agreement if it determines that Customer is in material violation of its obligations set forth under this Section 3, provided that (a) LoyaltyExpress has first given Customer at least 10 days prior written notice of its intent to suspend such services, stating in detail the nature of the alleged violation, and (b) Customer has neither cured such violation nor given a reasonable refutation thereof within such period. While such services are suspended, Customer will continue to pay LoyaltyExpress for such services.

3.7 LoyaltyExpress provides the Application Service, including related Software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Application Service and/or the Software include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with LoyaltyExpress to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

4. **Payment Terms**

4.1 Except as otherwise set forth in and SOW, the subscription fees are to be paid quarterly, in advance. Subscriptions are billed quarterly and the invoice is dated 30 days in advance of the subscription period. All fees are quoted in United States Dollars. Fees are based on services purchased and not actual usage and payment obligations are non-cancelable and fees paid are non-refundable, except as otherwise expressly set forth herein. The number of subscriptions purchased cannot be decreased during the relevant Subscription Term. Unless otherwise set forth in and SOW, subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore to the extent applicable, fees for subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term. Additional subscriptions may also be subject to increased rates, in LoyaltyExpress's sole discretion, based upon on Customer's data sizing increases from Customer's data requirements identified as of Customer's initial SOW or order of the Application Service and/or any increases in pricing from LoyaltyExpress's provider.

4.2 Professional Services/Training

(a) The fees for any Professional Services requested by or required by the Customer shall be billed as reflected in an SOW

or in any subsequent change orders. All Professional Services shall be deemed accepted by Customer 10 days after the date Customer is notified that such Professional Services have been completed unless Customer notifies LoyaltyExpress in writing (including email and other means of electronic communication) of its non-acceptance.

(b) It is specifically understood and agreed to by Customer that Customer shall be responsible for initiating, in writing to LoyaltyExpress, all requests regarding its desired training in the Application Service, including the Customer's desired scope and level of training, and all details relating to timing of such requested training. Once Customer has so requested such training, and LoyaltyExpress, after consultation with Customer, has reviewed and approved all details related to such training, then the parties shall mutually cooperate to implement the agreed upon training. LoyaltyExpress shall not be responsible for any costs or expenses incurred or suffered by Customer, or for any refunds related to training services, in the event that Customer fails to initiate its request for training in accordance with this Section.

4.3 Invoicing and Payment. Customer will provide LoyaltyExpress with a valid purchase order or alternative document reasonably acceptable to LoyaltyExpress. LoyaltyExpress shall invoice Customer for fees for the Application Service in advance and otherwise in accordance with the terms of the applicable SOW. Unless otherwise stated in the applicable SOW, invoiced charges are due net 30 days from the invoice date. Payment for Professional Services is payable within 30 days after the date of LoyaltyExpress's invoice. Customer shall reimburse LoyaltyExpress for reasonable food, lodging, travel, and incidental expenses incurred by LoyaltyExpress's personnel in conjunction with any on-site Professional Services ordered by Customer. If such Professional Services are performed at LoyaltyExpress's premises, such expenses incurred by Customer's personnel shall be borne by Customer. All payments made under this Agreement shall be in United States dollars. Customer is responsible for providing complete and accurate billing and contact information to LoyaltyExpress and notifying LoyaltyExpress of any changes to such information.

4.4 Overdue Charges. If any fees are not received from Customer by the due date, then at LoyaltyExpress's discretion, such fees may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

4.5 Suspension of Application Service. If any amount owing by Customer under this or any other agreement for LoyaltyExpress's services is 30 or more days overdue, LoyaltyExpress may, without limiting LoyaltyExpress's other rights and remedies, suspend the Application Service to Customer until such amounts are paid in full. LoyaltyExpress will give Customer at least 7 days' prior notice that Customer's account is overdue before suspending the Application Service to Customer. Further, a pre-pay by Customer will be required to restart any such suspended Application Service. In addition to the foregoing, LoyaltyExpress shall be entitled to recover all reasonable costs of collection (including agency fees, attorneys'

fees, expenses and costs) incurred in attempting to collect payment from Customer.

4.6 Payment Disputes. LoyaltyExpress shall not exercise LoyaltyExpress's rights under Section 4.4 (Overdue Charges) or 4.5 (Suspension of Application Service) if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

4.7 Taxes. LoyaltyExpress's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with Customer's purchases hereunder. If LoyaltyExpress has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides LoyaltyExpress with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, LoyaltyExpress is solely responsible for taxes assessable against it based on LoyaltyExpress's income, property and employees.

5. **Proprietary Rights**

5.1 Subject to the limited rights expressly granted hereunder, LoyaltyExpress reserves all rights, title and interest in and to the Application Service and/or the Software, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein. Further, any modifications, extensions, simplifications, or enhancements to the Application Service and/or the Software suggested, conceived of, designed, prototyped and/or implemented by LoyaltyExpress and/or Customer, including Authorized Users, during the term of this Agreement shall become the exclusive property of LoyaltyExpress and LoyaltyExpress's Confidential Information. LoyaltyExpress shall have the sole and exclusive right to register copyright of such materials in its own name in any and all countries, to obtain renewals, and to manufacture, reproduce, publish, distribute and sell the same.

5.2 LoyaltyExpress shall not knowingly allow Customer Data, or information contained therein, including personally identifiable information ("PII"), to be used for any purpose other than processing and storage under this Agreement, nor shall it disclose any such information for any other purpose unless authorized by Customer in writing. For the purposes of this Agreement, "PII" refers to information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. By way of illustration and not limitation, PII includes information that is referred to in various statutes and regulations as "personal information", "non-public personal information", "protected health information" and other such similar terms.

5.3 LoyaltyExpress shall have the right to use aggregated Customer Data that has been stripped of PII ("Aggregate Data") for its own uses and may combine such Aggregate Data with data of other customers for its own uses, including but not limited to studies, white papers, reports and marketing

materials. LoyaltyExpress shall not be obligated to provide Customer with Aggregate Data, but may, in LoyaltyExpress's sole and absolute discretion, share Aggregate Data with Customer or any third party, provided such Aggregate Data in no way identifies Customer without Customer's prior written consent.

5.4 If Customer, a third party acting on Customer's behalf, or an Authorized User creates applications or program code using the Application Service, Customer authorizes LoyaltyExpress to host, copy, transmit, display and adapt such applications and program code, solely as necessary for LoyaltyExpress to provide the Application Service in accordance with this Agreement. Subject to the above, LoyaltyExpress acquires no right, title or interest from Customer under this Agreement in or to such applications or program code, including any intellectual property rights therein.

5.5 Creative Work Product Deliverables. If an SOW specifies the production, creation and delivery of a Creative Work Product Deliverable, then the following provisions will apply:

(a) Customer owns the Creative Work Product Deliverables, excluding any LoyaltyExpress Tools and Third Party Materials incorporated therein.

(b) To the extent LoyaltyExpress incorporates any LoyaltyExpress Tools into any Creative Work Product Deliverable created pursuant to an SOW, LoyaltyExpress grants to Customer a perpetual, worldwide, non-exclusive right and license to use, execute, reproduce, display, modify and perform such LoyaltyExpress Tools solely as incorporated in the Creative Work Product Deliverable, and to create and have created derivative works of such LoyaltyExpress Tools in connection with the creation of derivative works based on the Creative Work Product Deliverable in which the LoyaltyExpress Tools are incorporated. Notwithstanding anything to the contrary herein, it is understood and agreed that (i) LoyaltyExpress retains all right, title and interest in and to the LoyaltyExpress Tools, and Customer shall have no rights to source, object or other executable code related to the LoyaltyExpress Tools, except as mutually agreed for any generic or non-customized code or portions thereof and (ii) Customer shall not separately use (and the above license rights do not apply to the LoyaltyExpress Tools on a standalone basis) any LoyaltyExpress Tools included in the Creative Work Product Deliverables. LoyaltyExpress shall provide Customer with a description of LoyaltyExpress Tools that it intends to incorporate in the Creative Work Product Deliverable, and such LoyaltyExpress Tools shall not be included in any such Creative Work Product Deliverable without the prior written approval of Customer.

(c) If LoyaltyExpress provides, uses, or requires Customer to use, any Third Party Materials in connection with the Creative Work Product Deliverables, then any restrictions on the use of Third Party Materials, if any, will be set forth in the applicable SOW. By way of example, such restrictions on use of Third Party Materials may include: (i) use of the Third Party Materials only in an online or e-mail environment; (ii) no decompiling or use of individual components of Third Party Materials

incorporated into a work product; and/or (iii) no use of Third Party Materials incorporated into a broadcast distribution market, such as television or radio.

(d) Solely to the extent that the Application Service and Creative Work Product Deliverable are combined as the finished output of the Services, such combination ("**Finished Output**") is the copyrighted property of LoyaltyExpress and its licensors and are licensed only for use as a complete work presented in an online environment. Online environments include hyperlinks to intellectual property rights (of LoyaltyExpress, Customer and/or third parties) from the Application Service to Customer's viewers through the internet or through Customer's website. Decompiling, copying, reuse of any Finished Output elements, or distribution by any means other than as expressly permitted herein is strictly prohibited and constitutes an unlicensed use of materials copyrighted by LoyaltyExpress and others.

6. Risks & Responsibilities

6.1 The Customer shall be responsible for all originating communications connections from Customer's site(s) to the Internet or any other method of linking to the Application Service. LoyaltyExpress shall not be responsible for the performance of these communications links. Customer acknowledges that from time to time, through no fault of LoyaltyExpress, communications problems do occur and that LoyaltyExpress will make reasonable efforts to minimize any such problems but shall not be responsible for communications problems outside of LoyaltyExpress's control or caused by a Force Majeure Event.

6.2 Network access. Customer's modifying or deleting company or personal files and Authorized Users' account settings, releases LoyaltyExpress from any liability or responsibility to repair or reconfigure Customer files or account settings and Customer will pay for any work authorized by Customer and performed by LoyaltyExpress to replace or repair deleted files, or to reconfigure Customer accounts, in accordance with LoyaltyExpress's standard rates and policies. Customer will only allow Authorized Users to have access to the Application Service and/or make decisions or requests with respect to the Application Service.

6.3 LoyaltyExpress Email Server. Certain features and functions of the Application Service serves as an external email server for the Customer. If applicable to the Application Service licensed by Customer, Customer will establish LoyaltyExpress's email domain as a "White Listed" mail service domain within Customer's email environment with privileges consistent with Customer's internal email systems. Customer will cooperate with LoyaltyExpress to successfully resolve any internal issues associated with establishing the LoyaltyExpress Services email server.

6.4 If the Customer requests LoyaltyExpress to convert any Customer Data to be accessible by the Software then Customer must provide such Customer Data to LoyaltyExpress in the format specified by LoyaltyExpress. The failure of Customer to provide Customer Data in the format specified by LoyaltyExpress shall not discharge or otherwise limit Customer's obligations to LoyaltyExpress under this Agreement. Should Customer deliver Customer Data in a format

other than as so specified, LoyaltyExpress reserves the right to charge additional fees to convert such Customer Data.

6.5 At no additional charge, LoyaltyExpress will provide standard support and maintenance services (“**Support Services**”) to Customer with respect to the Application Service in accordance with LoyaltyExpress’s then-current Support Services policy (a current copy is set forth in the attached Schedule A). LoyaltyExpress may update its Support Services policy from time to time and will make such updated Support Services policy available to Customer. Such Support Services shall not extend to any non-LoyaltyExpress provided software and shall in no way cover any hardware, networks, servers, printers or other devices associated with the Customer’s system environment.

6.6 LoyaltyExpress shall use commercially reasonable efforts to (i) make the Application Service available in accordance with the Service Level Agreement set forth in Schedule A hereto, and (iii) provide the Application Service only in accordance with applicable laws and government regulations.

6.7 LoyaltyExpress shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. LoyaltyExpress shall not, except as otherwise permitted hereunder (a) modify Customer Data, (b) disclose Customer Data except as compelled by law or as expressly permitted in writing by Customer, or (c) access Customer Data, except to provide the Application Service and prevent or address service or technical problems, or at Customer's request in connection with customer support matters.

7. Representations, Warranties and Remedies

7.1 The Customer acknowledges that the Software meets its requirements, as best determinable from demonstrations and Documentation provided by LoyaltyExpress. The Customer assumes full responsibility for management, supervision and control of the use of the Software and access to the Application Service.

7.2 Subject to the other provisions of this Section 7, LoyaltyExpress warrants to Customer that (i) LoyaltyExpress has validly entered into this Agreement and has the legal power to do so, (ii) the Application Service shall perform materially in accordance with its applicable Documentation, (iii) the functionality of the Application Service will not be materially decreased during the applicable Subscription Term, and (iv) LoyaltyExpress will not intentionally transmit Malicious Code to Customer. In the event that the Application Service fails to comply with the foregoing warranty under sub-section 7.2(ii), Customer must (a) notify LoyaltyExpress of such non-compliance; (b) provide LoyaltyExpress with documentation of the error or deficiency and the necessary software and data required to reproduce the error or deficiency, and (c) provide all other reasonable support and assistance in discovering the cause or a cure for the error or deficiency. LoyaltyExpress’s sole obligation, and Customer’s exclusive remedy under this Section 7.2, shall be for LoyaltyExpress at its sole option, to either: (x) fix or replace, at no charge to the Customer, any part of the Application Service not operating in accordance with its

Documentation, or (y) if LoyaltyExpress fails or is unable to fix or replace the Application Service, after the exercise of commercially reasonable efforts, then LoyaltyExpress may terminate this Agreement and refund to Customer unearned fees paid by Customer to LoyaltyExpress.

7.3 LoyaltyExpress warrants that the Professional Services will be of a professional quality conforming to generally accepted industry standards and practices. Such warranty shall apply to a particular Professional Services for a period of 30 days following rendering of the Professional Services. If Customer believes that any Professional Services fail to conform to this warranty, Customer must notify LoyaltyExpress within such 30 day period. LoyaltyExpress's sole responsibility (and Customer’s sole remedy) in the event any Professional Services fail to conform to this warranty is to exercise reasonable efforts to bring the Professional Services into compliance with this warranty.

7.4 LoyaltyExpress and Customer each warrant to the other that it will not knowingly introduce any Malicious Code to the hardware or software of the other party.

7.5 Warranty Disclaimer. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED BY LOYALTYEXPRESS, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, PERFORMANCE OR FITNESS FOR A PARTICULAR PURPOSE, OR THEIR EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION. LOYALTYEXPRESS MAKES NO WARRANTY AGAINST INTERFERENCE WITH CUSTOMER’S USE OF THE APPLICATION SERVICE, SOFTWARE AND/OR PROFESSIONAL SERVICES. LOYALTYEXPRESS DOES NOT WARRANT THAT CUSTOMER’S USE OF THE APPLICATION SERVICE, SOFTWARE AND/OR PROFESSIONAL SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE APPLICATION SERVICE, SOFTWARE AND/OR PROFESSIONAL SERVICES WILL MEET CUSTOMER’S REQUIREMENTS, THAT THE APPLICATION SERVICE, SOFTWARE AND/OR PROFESSIONAL SERVICES WILL OPERATE IN COMBINATIONS WHICH CUSTOMER MAY SELECT FOR USE, AND LOYALTYEXPRESS DOES NOT WARRANT AS TO ANY RESULTS THAT MAY BE OBTAINED BY CUSTOMER’S USE OF THE APPLICATION SERVICE, SOFTWARE AND/OR PROFESSIONAL SERVICES. LOYALTYEXPRESS DISCLAIMS, AND CUSTOMER WAIVES, THE BENEFIT OF ANY REPRESENTATIONS AND WARRANTIES NOT EXPRESSLY SET FORTH IN THIS AGREEMENT.

7.6 Customer warrants to LoyaltyExpress that Customer has validly entered into this Agreement and has the legal power to do so.

8. Confidentiality

8.1 Definition of Confidential Information. As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing,

that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information shall include without limitation Customer Data; LoyaltyExpress Confidential Information shall include without limitation the Application Service and/or the Software; and Confidential Information of each party shall include the terms and conditions of this Agreement and all order forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without any utilization of the Disclosing Party's Confidential Information.

8.2 Protection of Confidential Information. The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein for the protection of Confidential Information. The Receiving Party shall be responsible for any use or disclosure of Confidential Information by any of its, and its Affiliates', employees, contractors and/or agents. Neither party shall disclose the terms of this Agreement or any order form to any third party other than its Affiliates and their legal counsel and accountants without the other party's prior written consent.

8.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

9. Term and Termination

9.1 Term of Agreement. This Agreement will begin on the Effective Date and will remain in force until there are no Statements of Work in effect for a period of 12 consecutive months, unless terminated earlier in accordance with the terms of this Agreement.

9.2 Subscription Term. Each Subscription Term specified in a Statement of Work will begin upon the date the applicable Statement of Work is executed, unless a different start date is expressly stated in such Statement of Work, and will remain in force until the end of such Subscription Term, unless terminated earlier in accordance with the terms of this Agreement. Each Subscription Term will automatically renew for successive 12 month renewal terms (each a "Renewal Term", unless either party gives the other notice of non-renewal at least 60 days before the end of the relevant Subscription Term. LoyaltyExpress will have the right to adjust the pricing terms, charges, rates and prices stated in the Statement of Work upon renewal of each Subscription Term and will provide Customer with prior written notice of same at least 60 days before the expiration of a Subscription Term.

9.3 Either party may, at its option, terminate this Agreement and the rights hereunder immediately in the event of a breach by the other party of the provisions of Sections 3, 5 and/or 8 herein.

9.4 Either party may, at its option, terminate this Agreement and the rights hereunder upon 30 days written notice to the other party if the other party:

(a) fails to pay any undisputed fees within the time-frame provided for payment of such fee; or

(b) breaches any of such party's other material obligations under this Agreement and such breach remains uncured 30 days following notice to such party of same.

9.5 After the initial Subscription Term of an SOW, either party may electively terminate such SOW by providing 90 days prior written notice to the other party of its intention to terminate such SOW.

9.6 Bankruptcy. Either party may terminate this Agreement immediately upon delivery of written notice if: (a) the other party makes an assignment for the benefit of creditors; (b) the other party ceases to carry on business as a going concern; (c) the other party becomes the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or a receiver is appointed with respect to a substantial part of its assets; or (d) commits, or is under investigation for, a violation of the Act or any other law, regulation, rule or ordinance

9.7 In the event of termination of this Agreement for any reason, all Statements of Work will automatically terminate and all rights granted hereunder will terminate immediately and Customer shall not be entitled to any refund or be relieved of any obligation for payment of amounts due and payable hereunder, including without limitation full payment for the Minimum Commitment for the Subscription Term. Upon any termination for any reason, Customer shall pay LoyaltyExpress, within 30 days of the termination date, any unpaid fees covering the remainder of the Subscription Term of all SOWs after the effective date of termination and any amounts owed, but not yet paid, for Professional Services and expenses incurred and work performed prior to termination.

9.8 Upon termination of this Agreement for any reason, Customer shall return or destroy all copies of the Software, Documentation or other LoyaltyExpress Confidential

Information in Customer's possession and certify compliance with such requirement in writing.

9.9 Upon termination of this Agreement for any reason, and subject to payment by Customer of all amounts due and payable, LoyaltyExpress will deliver to Customer its Customer Data in a format acceptable to LoyaltyExpress. Additional fees may be incurred for additional data requested. LoyaltyExpress maintains the right to hold Customer Data for up to three years from date of termination. Notwithstanding the foregoing, after 30 days from the termination date of this Agreement, LoyaltyExpress shall have no obligation to maintain or provide any of Customer Data and may thereafter, unless legally prohibited, delete all of Customer Data in LoyaltyExpress systems or otherwise in LoyaltyExpress's possession or under LoyaltyExpress's control.

9.10 Sections 1, 3.2, 4, 5, 7.5, 8, 9.7, 9.8, 9.9, 9.10, 10, 11, 12, 15, 16, 17, 18, 19, 20, 22, 23 and 24 shall survive any termination or expiration of this Agreement.

10. Indemnity

10.1 Indemnification by LoyaltyExpress. LoyaltyExpress shall defend Customer against any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the use of the Application Service, as permitted hereunder, infringes or misappropriates the intellectual property rights of a third party (a "**Claim Against Customer**"), and shall indemnify Customer for any damages, attorney fees and costs finally awarded against Customer, as a result of, and for amounts paid by Customer under a court-approved settlement of, a Claim Against Customer; provided that Customer (a) promptly gives LoyaltyExpress written notice of the Claim Against Customer; (b) gives LoyaltyExpress sole control of the defense and settlement of the Claim Against Customer (provided that LoyaltyExpress may not settle any Claim Against Customer unless the settlement unconditionally releases Customer of all liability); and (c) provides to LoyaltyExpress all reasonable assistance, at LoyaltyExpress's expense. In the event of a Claim Against Customer, or if LoyaltyExpress reasonably believes the Application Service may infringe or misappropriate, LoyaltyExpress may in LoyaltyExpress's discretion and at no cost to Customer (i) modify the Application Service so that it no longer infringes or misappropriates, without breaching LoyaltyExpress's warranties hereunder, (ii) obtain a license for Customer's continued use of the Application Service in accordance with this Agreement, or (iii) terminate Customer's access to such Application Service upon 30 days' written notice and refund to Customer any prepaid fees covering the remainder of the Subscription Term after the effective date of termination.

10.2 Indemnification by Customer. Customer shall defend LoyaltyExpress against any claim, demand, suit or proceeding made or brought against LoyaltyExpress by a third party alleging that Customer Data, or Customer's use of the Application Service and/or the Software in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a "**Claim Against LoyaltyExpress**"), and shall indemnify LoyaltyExpress for any damages, attorney fees and costs finally awarded against LoyaltyExpress, as a result of, or for any

amounts paid by LoyaltyExpress under a court-approved settlement of, a Claim Against LoyaltyExpress; provided that LoyaltyExpress (a) promptly gives Customer written notice of the Claim Against LoyaltyExpress; (b) gives Customer sole control of the defense and settlement of the Claim Against LoyaltyExpress (provided that Customer may not settle any Claim Against LoyaltyExpress unless the settlement unconditionally releases LoyaltyExpress of all liability); and (c) provides to Customer all reasonable assistance, at Customer's expense.

10.3 Exclusive Remedy. This Section 10 (Indemnity) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

11. Notices

Any notice to be given hereunder shall be in writing and sent by certified mail, return receipt requested, or by nationally-recognized overnight courier service. Notice to LoyaltyExpress shall be sent to:

LoyaltyExpress, LLC
53 Commerce Way
Woburn, MA 01801
Attention: Chief Financial Officer

Notice to Customer shall be sent to Customer at the address set forth on the signature page hereto. The parties may, from time to time, change such notice address but shall give written notice no less than 20 days before such new address becomes effective. Notice shall have been deemed given: (a) when personally delivered; (b) when received; or (c) in the case of notice sent via certified mail and delivery is refused by the recipient, on the date when such delivery is refused. Notice may also be given through electronic means such as email or facsimile but shall only be deemed valid and effective upon acknowledgment of receipt by the other party.

12. Limitation of Liability

12.1 General Limitations. EXCEPT FOR INDEMNIFICATION OBLIGATIONS HEREUNDER AND/OR SECTIONS 3, 5 AND 8, UNDER NO CIRCUMSTANCES WILL EITHER PARTY, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL DAMAGES OR COSTS (INCLUDING ATTORNEYS' FEES), OR LOSS OF PROFITS, REVENUE OR GOODWILL, IN ANY WAY, REGARDING THIS AGREEMENT OR RESULTING FROM THE USE OR INABILITY TO USE, OR PERFORMANCE OR NONPERFORMANCE OF, THE SOFTWARE, THE APPLICATION SERVICE OR ANY PROFESSIONAL SERVICES PROVIDED BY LOYALTYEXPRESS, OR ANY COMPONENTS THEREOF, INCLUDING FAILURE OF ESSENTIAL PURPOSE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH

LIABILITY, WHETHER SUCH LIABILITY IS BASED UPON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

12.2 Cap On Liability. NOTWITHSTANDING THE PROVISIONS OF SECTION 12.1, IN NO EVENT WILL LOYALTYEXPRESS'S AGGREGATE LIABILITY TO CUSTOMER FOR ANY CAUSE, AND REGARDLESS OF THE FORM OF ACTION, FOR DAMAGES ATTRIBUTABLE TO THIS AGREEMENT, THE SOFTWARE, THE APPLICATION SERVICE AND/OR ANY PROFESSIONAL SERVICES PROVIDED HEREUNDER, EXCEED THE FEES STATED HEREIN AND WHICH HAVE BEEN PAID TO LOYALTYEXPRESS BY CUSTOMER WITHIN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE GIVING RISE TO SUCH LIABILITY. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION.

13. **Assignment; Binding Effect**

Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party. Any attempted assignment in violation of this Section 13 shall be void. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their permitted transferees, successors and permitted assigns. Notwithstanding the foregoing or anything to the contrary, LoyaltyExpress may, without the consent of Customer, assign this Agreement and its rights hereunder to an entity which has acquired or succeeded to a substantial part of LoyaltyExpress's business to which this Agreement pertains and which undertakes in writing to fully perform and discharge LoyaltyExpress's obligations and liabilities hereunder.

14. **Marketing**

Customer agrees that during the term of this Agreement LoyaltyExpress may publicly refer to Customer, orally and in writing, as a customer of LoyaltyExpress. In addition to the foregoing, either party may publicize the existence and general nature of the relationship established by this Agreement through mutually agreed upon press releases and other marketing collateral. Customer consents to LoyaltyExpress's right to use Customer's name on LoyaltyExpress's website and in marketing activities and press releases. Customer agrees to participate as a "Premier Reference Partner" with LoyaltyExpress, and as such, agrees to: (a) participate in a reasonable and non-disruptive number of reference calls to prospective LoyaltyExpress clients, and industry analysts; (b) participate in a joint press release at execution of this Agreement; (c) participate in a joint case study; and (d) participate in one industry trade show or LoyaltyExpress Webinar.

15. **Costs and Attorneys' Fees**

The prevailing party in any legal action or other proceeding arising out of or related to this Agreement shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses incurred in such action, including without limitation court costs and reasonable attorneys' fees.

16. **Dispute Resolution**

Except with respect to any injunctive relief, in the event a dispute arises between the parties in connection with this Agreement, before resorting to judicial process, Customer must notify the LoyaltyExpress project manager thereof, and Customer's representative and the LoyaltyExpress project manager will attempt to resolve the matter. If the dispute cannot be resolved by the liaisons within 10 business days of Customer's informing LoyaltyExpress in writing of the issue in dispute, then Customer's representative will promptly refer the dispute to Customer's senior management and the LoyaltyExpress project manager will promptly refer the dispute to LoyaltyExpress senior management. If these persons cannot resolve the dispute within 10 business days after the conclusion of the preceding 10-day period, then either party will have the right to proceed to resolve the dispute by judicial process.

17. **Headings**

The headings herein are for the convenience of the parties and are not intended to substitute, modify, delete or amend the text of this Agreement.

18. **Entire Agreement; Amendments & Priority; Waiver; Severability**

18.1 This Agreement, including all schedules and addenda hereto constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any schedule or addendum hereto, the terms of this Agreement shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Customer's purchase order or other Customer order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

18.2 Any modification to this Agreement shall be in writing and signed by both parties. In the event that a term or condition in this Agreement conflicts with a term or condition in a SOW, the term of this Agreement shall have priority unless such conflicting term is explicitly modified by such SOW and such SOW is executed by both parties.

18.3 A waiver by either party of its rights hereunder shall not be binding unless contained in a writing signed by an authorized representative of the party waiving its rights. The non-enforcement or waiver of any right under this Agreement shall not constitute a continuing waiver of such right or any expectation of non-enforcement unless expressly so agreed in writing. It is agreed that no use of trade or other regular practice or method of dealing between the parties hereto shall be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.

18.4 If any provision of this Agreement is found invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.

18.5 There are no third-party beneficiaries to this Agreement. This Agreement is not intended to confer upon any

person other than the parties any rights, remedies or other benefits hereunder. Accordingly, LoyaltyExpress owes no duty or obligation to any such third parties pursuant to the terms of this Agreement and shall not be responsible for any claims made and/or damages asserted by any such third parties.

19. Signatures and Counterparts

19.1 Each party has caused this Agreement to be executed by a duly authorized representative.

19.2 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of this Agreement, a facsimile execution shall be treated as an original signature. The parties agree that electronic signatures (“E-signatures or digital signatures”) shall be valid and enforceable.

20. Relationship of Parties

The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. During the term of this Agreement, and for a period of one year thereafter, both parties agree not to solicit, induce, attempt to hire or hire any employee of the other party, or assist in such hiring by any other person or business entity or encourage any such employee to terminate his or her employment with the other party, without prior written consent of the other party. The foregoing prohibition will not include placing an advertisement for a job in newspapers or professional journals or web sites, or contacting an individual who has placed a resume on a web site or with a recruiting firm/recruiter, participating in job fairs, or similar activities that result in a party’s receipt of a resume from the other party’s employee and responding to such resume.

21. Force Majeure

If either party to this Agreement shall be prevented, hindered or delayed in the performance or observance of any of its obligations hereunder, with the exception of payment obligations, by reason of any act of God, natural disaster, war, riot, civil commotion, explosion, fire, government action, epidemic, Internet failure or other circumstance beyond its reasonable control, then such party shall be excused from further performance or observance of the obligation so affected for as long as such circumstances shall prevail (a “Force Majeure Event”). If performance is hindered or delayed due to a Force Majeure Event, the time for completion of such performance shall be extended by the time reasonably necessary to overcome the effects causing such delay.

22. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to its choice of law provision, and the parties hereby submit to the jurisdiction of the courts of the Commonwealth of Massachusetts. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

23. Export Compliance

The Application Service, the Software and/or other technology LoyaltyExpress makes available, and derivatives

thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not permit Authorized Users to access or use the Application Service in a U.S.-embargoed country or in violation of any U.S. export law or regulation.

24. Audit

During the term of this Agreement and for a period of one year thereafter, LoyaltyExpress shall have the right from time to time, but not more than once per quarter, at its own expense and under reasonable conditions of time and place, to have an independent auditor, under duties of confidentiality, audit and copy all records of Customer relating to any of Customer's obligations under this Agreement. In the event any such audit discloses any breach of the terms of this Agreement by Customer or Customer's employees, agents and/or contractors, including without limitation any utilization of the Application Service and/or the Software beyond Customer's scope of use hereunder, Customer shall, in addition to such other rights and remedies as may be available to LoyaltyExpress as the result of such breach, pay to LoyaltyExpress the full cost of such audit and copying.

END

SCHEDULE A

LOYALTYEXPRESS STANDARD SUPPORT SERVICES; SERVICE LEVEL AGREEMENT

1. **General.** LoyaltyExpress Support Services are provided by the LoyaltyExpress Customer Management Team (CMT). Support Services encompass technical troubleshooting, functional expertise and instruction on the configuration and use of the LoyaltyExpress Service, and general customer services.

Level 1 help desk support for Authorized User problems are required to go through a Customer Level 1 help desk before being submitted to LoyaltyExpress for level 2 help desk support.

2. **Technical Support Contact Information and Hours.** LoyaltyExpress will provide technical support by telephone and email for the LoyaltyExpress Service from 8 a.m. to 5 p.m. (Central Time), Monday-Friday, except for LoyaltyExpress holidays. Support Services documentation is also available within LoyaltyExpress's online customer portal. 24x7 support may be made available to Customer for a fee.

- LoyaltyExpress Phone Support: (877) 611-0104, ext. 1
- LoyaltyExpress Email Support: support@softvu.com

3. **Technical Support.** LoyaltyExpress will provide Customer with the Support Services described below:

- (a) **LoyaltyExpress Obligations.** LoyaltyExpress will provide technical support to Customer for the incidents reported by Customer, in order of preference, via telephone or email. Response time for initial LoyaltyExpress return contact and target resolution will be as set forth below. All assistance will be given in English only to 2 named employees of Customer. Each named employee will have sufficient knowledge of the LoyaltyExpress Service. Named employees may be changed by written notice to LoyaltyExpress. Each employee will have appropriate knowledge and training.

- (b) **Customer Obligations.** In order to properly identify and resolve errors, Customer will provide LoyaltyExpress with the following information:

- Incident severity as determined by Customer using definitions included below
- Contact name and preferred contact information
- Operating platform, and other environment specifications including third-party products involved
- Sample data, log files and sample code, if applicable
- Test case or step-by-step instructions to reproduce problem

4. **Escalation Procedures.** LoyaltyExpress will acknowledge and respond to all inbound requests for Support Services as specified in the Priority Support Table below. Resolution times will vary depending on the complexity of the reported problem and/or the nature of the required solution. In some cases, resolution may take longer if:

- A significant product change is required
- A third party network (e.g. Facebook) is responsible for the underlying problem.

LoyaltyExpress's standard framework for problem resolution is to categorize and prioritize problem reports in a typical manner, such as "Priority 1", "Priority 2", and "Priority 3". Any production system outage is automatically treated as a high/critical "Priority 1" and triggers a 24x7 development and support commitment until resolved. Lower priority issues are ranked based on impact to the Customer and issue complexity.

Priority 1 Support Issue	
Priority Definition	Widespread production system outage. System is
Initial Response	Within 180 Minutes Maximum
LoyaltyExpress Action	All resources applied 24x7 until resolved
Work-Around Target	1 Day (assumes all 3rd party platforms operating within SLA)
Resolution Target	2 Days (assumes all 3rd party platforms operating within SLA)
Priority 2 Support Issue	
Priority Definition	Major impact to production workflow. No clear work-
Initial Response	Within 240 Minutes Maximum
LoyaltyExpress Action	All resources applied within business hours until
Work-Around Target	2 Days (assumes all 3rd party platforms operating within SLA)
Resolution Target	3 Days (assumes all 3rd party platforms operating within SLA)
Priority 3 Support Issue	
Priority Definition	Minor impact to production workflow.
Initial Response	4-8 Business Hours Maximum.
LoyaltyExpress Action	Review and respond within stated time frame
Work-Around Target	3-5 Business Days
Resolution Target	Varies
Priority 4 Support Issue	
Priority Definition	Questions on product use, feedback, suggestions, other
Initial Response	Next Business Day
LoyaltyExpress Action	Review and respond within stated time frame
Work-Around Target	Suggest where appropriate
Resolution Target	Varies
Security Breach and Incident Management	

Priority Definition	Any credible indication that security has been breached will be immediately treated as a “ Priority 1 Support Issue ” as defined above. All service level commitments will apply.
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5. **Maintenance and Update Notification.** Customer will be notified via email or by screen notifications within the LoyaltyExpress Service at least 2 business days before planned maintenance, testing, or downtime that will take more than two hours and materially impact the availability and/or performance of the LoyaltyExpress Service. Customer will be notified of planned maintenance downtime of less than 2 hours at least 12 hours in advance of the planned downtime. In addition to the foregoing planned maintenance downtime, from time to time LoyaltyExpress will take down the system for a minimum amount of time at low usage times to implement LoyaltyExpress Service updates, although taking down the system for such updates is typically not necessary. No advance notice is provided to Customer with respect to such update downtime, provided, however, that in the event that this standard update window may be longer than reasonable, LoyaltyExpress will notify Customer as soon as possible before the planned update. While all attempts will be made to notify in advance and minimize interruptions to the LoyaltyExpress Service, it may be necessary to respond quickly and update without advanced notification. LoyaltyExpress makes every effort to avoid such scenarios.
6. **Disaster Recovery.** During the term of the Agreement, LoyaltyExpress will have a disaster recovery plan in place for the LoyaltyExpress Service. If LoyaltyExpress’s disaster recovery plan is invoked, LoyaltyExpress will (a) execute such plan and restore LoyaltyExpress Service to the Service Availability service level described below in accordance with the requirements of such plan, but no less than 4 days after invoking such plan subject to hardware availability, and (b) Customer will be treated with at least equal priority as any other LoyaltyExpress Customer of the LoyaltyExpress Service.
7. **Business Continuity.** During the term of the Agreement, LoyaltyExpress will have an annually tested business continuity plan in place to assist LoyaltyExpress in reacting to a disaster in a planned and tested manner.
8. **Service Level Commitment (SLA).** LoyaltyExpress will use commercially reasonable efforts to make the Application Service available at least 99.5% of the time, as measured monthly, subject to the scheduled downtime, unscheduled downtime and exclusions set forth below (“**Uptime Guarantee**”). For purposes of this Service Level Agreement, the Application Service is deemed “available” if the material functionality of the Software is available to Authorized Users.
- 8.1 **Exclusions.**
 - (a) The Uptime Guarantee shall not apply in the event that (i) any equipment (not in the custody or control of LoyaltyExpress or its third party hosting provider) malfunctions; or (ii) there is an occurrence of one or more of the following causes beyond the control of LoyaltyExpress or its hosting provider: interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion, denial of service attacks, or failure of the Internet generally; or (iii) there is any ("Force Majeure Event") (meaning any failure or delay in the performance of LoyaltyExpress's obligations to the extent such failure or delay is caused, directly or indirectly, by events beyond the reasonable control of LoyaltyExpress including, but not limited to, fire, flood, earthquake, elements of nature or acts of God, external labor disruptions or strikes not related to LoyaltyExpress, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, quarantines, embargoes and other similar governmental action, failure or interruption of any electrical power, Internet, telephone or communication line or like cause not within LoyaltyExpress’s reasonable control); or (d) the Uptime Guarantee is not met due to LoyaltyExpress’s suspension and/or termination of Customer’s right to use the Application Service in accordance with the Agreement.
 - (b) LoyaltyExpress takes responsibility for network availability within LoyaltyExpress’s network, however, LoyaltyExpress cannot be held liable for upstream problems (problems outside of LoyaltyExpress’s network or not within LoyaltyExpress’s direct control). LoyaltyExpress is only responsible to keep and

maintain LoyaltyExpress's internal network connectivity. "Internal network" means LoyaltyExpress's data center and all of its connectivity from its uplink providers going into such data center. LoyaltyExpress shall not be held responsible for any connectivity problems caused in other networks outside of LoyaltyExpress's internal network not within LoyaltyExpress's control. In addition to the exceptions set forth above, Customer shall not receive any Service Credits (as defined below) hereunder in connection with any failure or deficiency of the Application Service availability caused by or associated with:

- (i) Failure of access circuits to LoyaltyExpress's network, unless such failure is caused solely by LoyaltyExpress;
- (ii) DNS issues outside the direct control of LoyaltyExpress;
- (iii) Issues with Customer access to: FTP, SMTP (or other monitored or non-monitored service), that do not relate to a failure of those services by LoyaltyExpress (i.e. other customers are able to access LoyaltyExpress hosting services without issue and/or LoyaltyExpress is unable to duplicate reported issues);
- (iv) False service breaches reported as a result of outages or errors of any LoyaltyExpress measurement system;
- (v) Customer's acts or omissions (or acts or omissions of others engaged or authorized by Customer), including, without limitation, custom scripting or coding, any negligence, willful misconduct, or unauthorized use of the Application Service and/or Software;
- (vi) E-mail or webmail delivery, transmission and reception, unless such failure is caused solely by LoyaltyExpress and relates to a complete outage of the Application Service;
- (vii) DNS (Domain Name Server) Propagation;
- (viii) Outages elsewhere on the Internet that hinder access to Customer's account and are not due to LoyaltyExpress's actions or inactions. LoyaltyExpress is not responsible for browser or DNS caching that may make the Application Service appear inaccessible to Customer when others can still access it. LoyaltyExpress will guarantee only those areas considered under the control of LoyaltyExpress, including, LoyaltyExpress server links to the Internet, LoyaltyExpress routers, firewalls, and other network equipment, and LoyaltyExpress servers themselves.

8.2 Service Credits.

- (a) For this purpose, calendar months are deemed to begin at 12:00 a.m. U.S. Central Time on the first day of the calendar month and end at 11:59 p.m. U.S. Central Time on the last day of the calendar month. If LoyaltyExpress fails to meet the required Uptime Guarantee in a particular month, Customer shall be entitled to receive one or more Service Credits (as defined below) against future subscription fees, as set forth in the below table. A "Service Credit" means an amount equal to 1/30th of the Application Service monthly subscription fee. The total Service Credits for a given month will, in no event, exceed an amount equal to 100% of the then-current Application Service monthly subscription fee for the Application Service. Service Credits will be recognized for billing purposes in the month following the month giving rise to such Service Credits. All Service Credits will be calculated on a calendar month basis.

Minimum Uptime Percentage	Service Credit
If the Availability for a given calendar month is less than the Minimum Uptime Percentage.	1 Service Credit
For each 100-minute increment during the same calendar month that the 1 st Service Credit is provided, the Availability is less than the Minimum Uptime Percentage.	1 additional Service Credit per 100-minute increment

- (b) The Service Credits will be issued as a credit against future subscription fees due by Customer. The Customer must still be active on the Application Service during the billing period following the failure of the Uptime Guarantee in order to receive a Service Credit. A Service Credit will be applicable and issued only if the Service Credit amount for the applicable monthly billing cycle is greater than one dollar (\$1 USD). Service Credits may not be transferred or applied to any other Customer account or otherwise. Maximum credit shall not exceed the subscription fees for the Application Service, prorated on a monthly basis, for the affected month. Service Credits can only be applied to future invoices hereunder and only for

the Customer. Service Credits are exclusive of any applicable taxes charged to Customer or collected by LoyaltyExpress and are Customer's sole and exclusive remedy with respect to any failure by LoyaltyExpress to meet the Uptime Guarantee.

- (c) If Customer receives a Service Credit under this Section, then Customer may not also receive any other credit from LoyaltyExpress with respect to the same period of time under any contract or applicable policy that may be in effect from time to time, if any.
- (d) To request a Service Credit, the Customer must submit a Service Credit request in writing to LoyaltyExpress. All requests in connection with the Application Service must include the: account username; domain name (if applicable); the dates / times of the unavailability of Customer's access to the Application Service; and must be received by LoyaltyExpress within 72 hours after the Customer's access to the Application Service was not available, in order to be applicable. The Customer shall provide documentation of the outage, such as ping and/or trace route reports so that LoyaltyExpress can view the routes taken to LoyaltyExpress's network. If the unavailability of the Application Service is confirmed by LoyaltyExpress, Service Credits will be applied within 10 days after LoyaltyExpress's receipt of the Customer's written Service Credit request submission. LoyaltyExpress reserves the right to withhold any Service Credit if LoyaltyExpress cannot verify the downtime or Customer cannot show that Customer was adversely affected in any way as a result of the downtime.

SCHEDULE B

LOYALTYEXPRESS PERMISSION EMAIL POLICY

An Authorized User will not distribute any content, email or web publishing with or through the Application Service that violates the LoyaltyExpress Permission Email Policy described below.

1. **Permission-based email.** LoyaltyExpress allows Customer and its Authorized Users of the Application Service to distribute only permission-based emails in connection with the use of the Application Service. LoyaltyExpress defines permission-based emails as those emails sent to addresses that have been “opted-in” to mailing lists, email addresses that are used in legitimate 1-to-1 business communications, or email addresses that have otherwise been willingly submitted by its owner to the sender for contact purposes.
2. **Unsolicited Commercial Email is Prohibited.** Distribution of unsolicited commercial email with the Application Service is strictly prohibited. If Customer or any of its Authorized Users violates this policy, or anyone else uses the Customer account (with or without Customer’s knowledge or consent) to violate this policy, LoyaltyExpress may immediately suspend Customer’s access to the Application Service and Customer will be considered in breach of the Agreement. Any cure by Customer must include, without limitation, Customer’s implementation of LoyaltyExpress’s Email Best Practices Guidelines within a 30-day period from the infraction date. LoyaltyExpress will not be liable for any damage or provide refunds from such suspension(s) or any subsequent termination.
3. **Unlawful Usage.** Customer will not knowingly distribute any correspondence or otherwise utilize the Software in violation of any United States law, including, without limitation, laws regulating the distribution of commercial email such as the CAN-SPAM Act. Further, without derogation of the foregoing sentence, Customer and its Authorized Users will not use the Application Service to create or distribute obscene or scandalous works, as defined by federal, state or local laws.

SCHEDULE C

CAN-SPAM COMPLIANCE (within LoyaltyExpress's Platform)

This Schedule defines the Opt-out/Opt-in functionalities within the Application Service as it relates to the integration capabilities for any Customer & CRM environment. There are standard integration points provided by LoyaltyExpress and non-standard integration points as referenced by the dashed line elements within **Figure 1: Opt-Out Workflow Process** below.

Application Service Standard Process Steps:

1. New leads will be inserted into the CRM, at which time, rules will be evaluated and if TRUE, a Marketing Campaign will be triggered to the Application Service.
2. If the opt-out flag has been set in Application Service, then the email campaign will not be sent as the Application Service will not distribute a campaign if the email address has previously been opted-out within the Application Service.
3. If no opt-out flag was set, the Application Service will distribute a marketing campaign.
4. If the recipient of the email invokes the opt-out link within the marketing campaign, LoyaltyExpress will promptly opt-out the email address of the recipient and no additional campaigns will be distributed to the recipient.

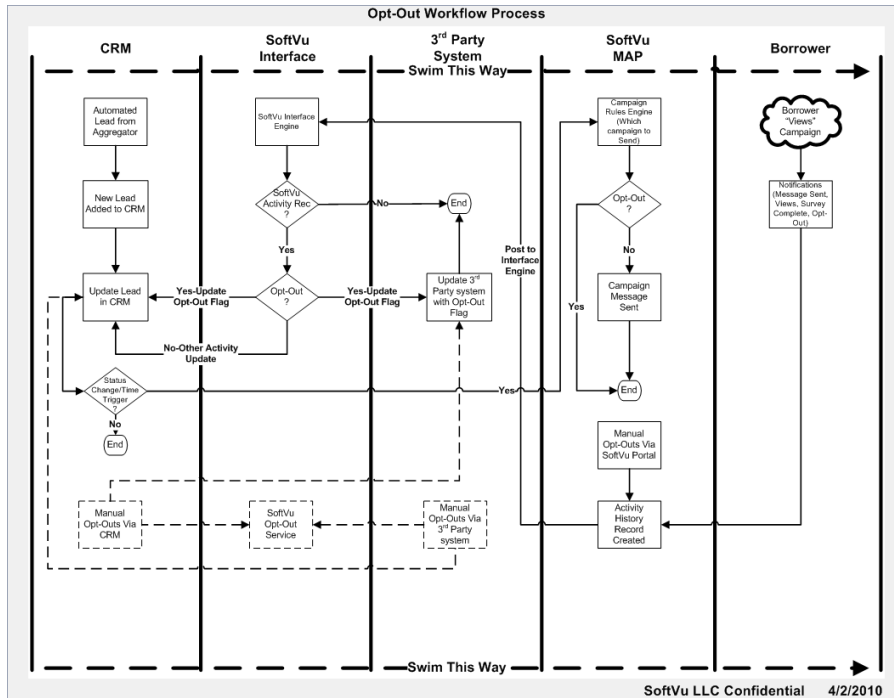
In addition, if the recipient contacts LoyaltyExpress Support directly and asks to be opted-out, LoyaltyExpress's support representative will immediately opt-out the recipient's email address and no additional campaigns will be distributed to the recipient.

- a. The Application Service will automatically post an opt-out activity record to LoyaltyExpress's Interface Engine. If Customer wishes that transaction to be posted to a 3rd party system, the Interface Engine will post a standard, XML-based transaction to the 3rd party system.
 - b. The 3rd party system will be responsible for updating its database with the opt-out information.
5. If the recipient contacts Customer directly and asks to be opted-out, Customer will immediately opt-out the recipient's email address so that no additional campaigns will be distributed to the recipient. Further, Customer will use best efforts to only provide and upload into the LoyaltyExpress Platform only pre-scrubbed opt-in, non-duplicative emails, free of any spam traps. Before any campaign or batch send, LoyaltyExpress may send a portion of the Customer-provided email addresses through a third party verification tool. LoyaltyExpress will pay for the sample cost for 1,000 email entries. If the third party hygiene report returns a list of unverified and malicious email addresses (e.g. emails that may include spam traps, etc.) of 5% or higher, the remaining email entries will be processed through the hygiene process at a per email fee specified in the SOW above the 5% which will be paid by Customer. If Customer is manually executing a batch send, then Customer must inform LoyaltyExpress before importing its email list in to the LoyaltyExpress Platform.

3rd Party Manual Process Steps:

1. If manual opt-outs are executed within a 3rd party system, LoyaltyExpress provides a standard opt-out service that the 3rd party system may invoke. Manual processes are indicated in **Figure 1: Opt-Out Workflow Process** below.
 - a. LoyaltyExpress will process valid requests for opt-out and update the opt-out information within the Application Service.
 - b. LoyaltyExpress will add an opt-out entry in the Application Service if no previous record exists.
 - c. Any 3rd party system is responsible for notifying any other 3rd party system regarding opt-outs.

Figure 1: Opt-Out Workflow Process



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Summary:

In summary, the Application Service provide the capability for its customers to aggregate all opt-out entries within the Application Service environment. LoyaltyExpress also has the capability to update 3rd party systems provided the 3rd party system can accept and process a standard XML-based transaction. LoyaltyExpress also provides Professional Services to assist customers with opt-out integration with 3rd party systems. LoyaltyExpress’s opt-out service also supports a list of email addresses in the event customers wish to pre-populate opt-out information in the Application Service environment thus providing a centralized, synchronized opt-out solution.