

## MASTER SERVICE AGREEMENT

Each Sales Order Form signed by Customer and Qubit Inc. (“**Qubit**”) is subject to this Master Service Agreement (these “**Terms**”).

THIS IS A LEGAL AND ENFORCEABLE CONTRACT BETWEEN QUBIT AND THE CUSTOMER. THE CUSTOMER IS RESPONSIBLE FOR CAREFULLY READING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT BEFORE SIGNING AN ORDER FORM, CLICKING “ACCEPT,” OR ACCESSING OR USING ANY QUBIT SERVICE OR PRODUCT. BY SIGNING AN ORDER FORM, OR ACCESSING OR USING ANY PRODUCT OR ADDITIONAL SERVICE, CUSTOMER CONFIRMS THAT CUSTOMER HAS ACCESSED ONLINE AND/OR BEEN PROVIDED A COPY OF THIS AGREEMENT AND THE QUBIT SALES ORDER FORM(S), AND HAS READ AND ACCEPTS ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THE SALES ORDER FORM IN THEIR ENTIRETY. NOTWITHSTANDING ANY DIFFERENT OR ADDITIONAL TERMS CUSTOMER MAY REFERENCE OR PROVIDE, QUBIT’S OFFER OR ACCEPTANCE TO ENTER INTO AN AGREEMENT WITH CUSTOMER WITH RESPECT TO ANY QUBIT PRODUCT OR SERVICE IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT AND CONDITIONED ON THE CUSTOMER’S CONSENT TO THIS AGREEMENT. THE CUSTOMER ACKNOWLEDGES THAT THE TERMS AND CONDITIONS OF THE SALES ORDER FORM(S) ARE INCORPORATED BY REFERENCE INTO THIS DOCUMENT AS IF SET FORTH FULLY HEREIN.

### 1. DEFINITIONS

1.1 The definitions and rules of interpretation in this clause apply in this Agreement

**Additional Charges:** means all fees payable by Customer to Qubit in addition to the Subscription Fees, each as set out in the Sales Order Form.

**Additional Services:** means those services provided in accordance with Section 4, as more particularly described in the Sales Order Form.

**Agreement:** means these Terms and conditions contained herein, together with a completed and signed Sales Order Form. For the avoidance of doubt, each Sales Order Form between Customer and Qubit forms one separate and distinct Agreement.

**Authorized Users:** means those employees, agents and independent contractors of Customer or a Customer Affiliate who have been authorized by Customer to use the Products in accordance with these Terms.

**Business Day:** means any day that is not a Saturday, Sunday or federal holiday in the United States.

**Confidential Information:** means any information disclosed by or on behalf of a party (the “Disclosing Party”) to the other party (the “Receiving Party”) or its Representatives (as defined below) that would be regarded as confidential by a reasonable business person relating to the business, affairs, customers, clients, suppliers, plans, intentions, market opportunities, operations, processes, product information, know-how, designs, trade secrets or software of a party or any of its subsidiaries or affiliates (but not information that is publicly known through no fault of the Receiving Party). Information shall not constitute Confidential Information for the purposes of this Agreement to the extent that the information (a) is or becomes publicly available through no fault of the Receiving Party; (b) is already in the Receiving Party’s lawful possession prior to the Disclosing Party’s disclosure; (c) is received by the Receiving Party from a third party without any restriction and without breach of any confidentiality obligation; or (d) is developed independently without assistance of the Disclosing Party and without the use of any information disclosed by the Disclosing Party. To implement exchanges of Confidential Information pursuant to this Agreement, from time to time, either party may be the Disclosing Party and the other party shall be the Receiving Party.

**Customer:** means any entity that purchases the Qubit Products, as more particularly detailed in the Sales Order Form.

**Customer Affiliate:** means an entity which directly or indirectly controls, is controlled by, or is under common control by or with a Customer.

**Customer Data** means (i) the data inputted by Customer or an Authorized User for the purpose of using the Products or facilitating Customer's use of the Products, and (ii) data inputted by and collected from users of the Customer Site (as defined below).

**Customer Site:** means those website URLs and mobile applications (as applicable) owned and operated by Customer or a Customer Affiliate on which Customer elects, and Qubit agrees, to implement the Script (as defined herein) and provide the Products, as such properties are more particularly detailed in the Sales Order Form.

**Data Protection Laws:** means any U.S. federal, state and local laws, as well as foreign laws and government-issued rules, regulations, guidelines, directives and requirements currently in effect or later implemented, modified, or amended, as they become effective that relate in any way to the privacy, security and processing of personal data, including data protection laws and their regulation in any jurisdiction applicable to the parties.

**Effective Date:** is the date defined in the Sales Order Form.

**Fees:** means the Subscription Fees and the Additional Charges (if applicable) as such amounts are more particularly detailed in the Sales Order Form.

**Generally Applicable Know-How:** means all material and know-how, including software (including any modifications now in effect or later developed and/or documentation related to it), code, product, invention, discovery, improvement and information, in each case generally applicable to Qubit's technology, business, business methods and processes (including Qubit's underlying information collection methodologies) that are created, derived, prepared, modified or generated by or in collaboration with Qubit and/or its sub-contractors pursuant to (and/or as a consequence of) the Products.

**Initial Subscription Term:** means the fixed period of 12 months commencing on the Effective Date.

**Intellectual Property Rights:** means all intellectual property rights in any part of the world, including patents, rights to inventions, utility models, copyright and related rights, trade and service marks, trade, business and domain names, rights in trade dress, rights to goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, semiconductor and topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future.

**Normal Working Hours:** means the time between 9:00 AM and 6:00 PM in the relevant US time zone in which the Additional Services are being performed on a Business Day. In the event the Additional Services are not being performed in the United States, the applicable time zone shall be Eastern Standard Time.

**Pageview:** means an occurrence on a Customer Site created by a visitor's interaction with such Customer Site which provides new information for Qubit to collect and process, including a change in URL, pagetype, product variant or basket status, steps in a transaction process, logins and logouts, form submissions, and registrations. During the Subscription Term, Qubit shall calculate Pageviews based on every load of Qubit's QTracker.js (or equivalent) when requested on the Customer site.

**Privacy Policy:** means the then current Qubit privacy policy located at <http://www.qubit.com/legal/product-privacy-policy> (as Qubit may update, modify, or change from time to time), which is incorporated herein by reference..

**Products:** means the products provided by Qubit to Customer under this Agreement, as more particularly described in the Sales Order Form.

**Renewal Term:** means the period described in Section 11.1 of this Agreement.

**Sales Order Form:** means the ordering document for the Products, which together with these Terms and conditions form this Agreement.

**Script:** means the unique Javascript generated by Qubit and provided to Customer which, when implemented on a Customer Site, interacts with the Products and enables the Products to function.

**SLA:** means the Qubit standard service level agreement for the Products which is annexed hereto as Exhibit "A" and is incorporated herein by reference.

**Subscription Fees:** means the fees payable to Qubit by Customer that are calculated on the number of Pageviews on the Customer Site for the Products, as set out in the Sales Order Form and paid in accordance with Section 6 below.

**Subscription Term:** has the meaning given in Section 11.1 below (being the Initial Subscription Term together with any subsequent Renewal Term(s)).

**Virus:** means anything or device (including any software, code, file or program) that may: (i) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; (ii) prevent, impair or otherwise adversely affect access to or the operation of any program or data; or (iii) adversely affect the user experience, including worms, trojan horses, malware, viruses and other similar things or devices, now known or later developed.

1.2 Clause and schedule headings are for informational and organizational purposes only and shall not affect the interpretation of this Agreement.

1.3 Where the words "include", "includes", "including" or "in particular" are used in an Agreement, they are deemed to have the words "without limitation" following them. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.4 If any term in these Terms conflicts with any terms or conditions in a Sales Order Form then the Sales Order Form shall prevail in relation to the Products or Additional Services detailed in that Sales Order Form.

## 2. SUPPLY OF THE PRODUCTS

2.1 Qubit shall, during the Subscription Term, supply the Products on and subject to the terms of this Agreement. Qubit undertakes that the Products will be supplied with reasonable and professional skill and care and in accordance with the SLA and Privacy Policy, provided that such undertaking shall not apply to the extent of any non-conformance that is caused by use of the Products contrary to Qubit's instructions, written or oral, or any modification or alteration of the Products or Script by a party other than Qubit or Qubit's duly authorized partners, contractors or agents. The Products are provided "as-is" subject to reasonable defect.

2.2 Customer shall (a) permit, assist and cooperate with Qubit to monitor Pageviews for the purpose of calculating the Fees; (b) provide Qubit with: (i) all necessary cooperation in relation to this Agreement; and (ii) all necessary access to such information as may be required in order to render and receive the Products, including access to Customer Data, security access information and configuration settings and services; (c) comply with all applicable laws and regulations of any government agency with respect to its activities under this Agreement; (d) carry out all of its responsibilities set forth in this Agreement in a timely and efficient manner. If there are delays in Customer's provision of any assistance or information as agreed by the parties, Qubit may adjust any agreed upon timetable or delivery schedule as reasonably necessary to compensate for such delay; and (e) be solely responsible for: (i) procuring and maintaining Customer's computer devices, network connections and telecommunications links, and the security thereof; (ii) all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Customer's own network connections or telecommunications links or caused by the internet; and (iii) all uses of Customer's account. Customer agrees to ensure that its network and systems (including its internet browser) comply with the specifications provided by Qubit as modified or amended.

Although Qubit has no obligation to monitor Customer's use of the Products, Qubit may do so and may prohibit any use of the Products it believes may be (or is alleged to be) in violation of this Agreement.

2.3 Customer agrees that Qubit is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and Customer acknowledges that the Products may be subject to limitations, delays and other problems inherent in the use of such communications facilities. **Other than as expressly provided in these Terms and conditions and the SLA, no implied conditions, warranties or other terms apply (including any implied warranties or terms as to Customer's use of the Products being uninterrupted or error-free or fitness for a particular purpose).** Customer acknowledges, agrees and understands that nothing herein shall be construed

**as, or considered a guaranty of performance of the Products by Qubit, including, but not limited to the success of such Product.**

2.4 This Agreement shall not prevent Qubit from entering into similar agreements with any third parties, or from independently developing, using, selling or licensing documentation, products and/or services that are similar to those provided under this Agreement.

2.5 During the Subscription Term, Qubit may allow Customer to test one or more new Qubit products that have not yet been released to the public (each such event a "**Usability Study**"). The purpose of a Usability Study is to test and study the usability of one or more pre-release products being developed by Qubit which Qubit may agree to make available to Customer for such purposes (together the "**Test Products**"). Any such Test Products shall be made available to Customer through the Qubit online user interface and shall be clearly labelled as Test Products. Customer acknowledges and agrees that its use of the Test Products shall be governed by the terms and conditions of the Qubit Trusted Tester Agreement available from time to time at: <http://www.qubit.com/legal/trusted-tester-agreement>, which is incorporated herein by reference.

### 3. CUSTOMER'S USE OF THE PRODUCTS

3.1 Subject to the terms and conditions of this Agreement (including payment by Customer of the Fees and Additional Fees in accordance with Section 6 and the restrictions set out in this Section 3), Qubit hereby grants Customer a non-exclusive, non-transferable (except as set forth specifically in Section 12.9), non-sublicensable, freely revocable right and license, during the Subscription Term only, to: (a) integrate the Script with the Customer Sites; and (b) permit Customer and the Authorized Users to use the Products, in each case, in accordance with the Terms and conditions of this Agreement, during the Subscription Term only and solely for Customer's internal business operations.

3.2 Customer hereby grants to Qubit a non-exclusive, royalty-free, non-transferable (except as set forth in Section 12.9), freely revocable right and license to use, modify, create derivative works of, transfer, and otherwise reproduce in any medium, currently known or developed in the future, any Customer Data for the sole purposes of (a) rendering the Products under this Agreement, and (b) developing, maintaining or improving the Products.

3.3 Customer shall: (a) keep secure and confidential any PIN codes, API keys and passwords necessary for accessing and using the Products; (b) use all reasonable efforts to not access, store, distribute or transmit any Viruses when accessing and using the Products; and (c) use all reasonable endeavors to prevent any unauthorized access to, or use of, the Products and, in the event of any such unauthorized access or use, to promptly notify Qubit and reasonably cooperate with Qubit to block the unauthorized access or use.

3.4 Customer shall not, directly or indirectly: (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties: (i) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Script (as applicable) or the Products in any form or media, their derivatives, source codes, or templates, or by any means; or (ii) attempt to reverse compile, disassemble, tamper with, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Script or Products or any other products which Qubit owns that is outside of the scope of this Agreement; (b) use the Products in a manner that is illegal or facilitates illegal activity, or causes damage or injury to any person or property or tortuously violates any rights or interests; (c) use any automated system, including "robots," "spiders," or "offline readers," to access the Products in a manner that sends more request messages to the Products than a human can reasonably produce in the same period of time by using a conventional online web browser; (d) attempt to interfere with or compromise the integrity or security of the Products; (e) access all or any part of the Products in order to build or facilitate a product or service that competes with the Products; (f) license, sell, rent, lease, transfer, assign, distribute, display, disclose, provide, or otherwise commercially exploit, or otherwise make the Products available to any third party (other than to an Authorized User in accordance with Section 3.1); (g) attempt to obtain, or assist any third party in obtaining, access to the Products or services other than as provided under this Agreement; (h) use the Product, Script or any work product developed under this Agreement by Qubit after the earlier expiration, termination or default of this Agreement, the Service Level Agreement or Sales Order Form. Customer Acknowledges and understands that continued use of the Products after the expiration or termination of this Agreement shall cause irreparable harm to Qubit, and accordingly, Qubit may take any and all actions necessary and appropriate to protect its rights, and in addition to payment of all Fees for the time of unauthorized use shall be responsible for all costs and damages incurred in Qubit's efforts to secure compliance, including legal fees; or (i) purport, promise or agree to do any of the foregoing.

Qubit may, at its sole discretion and without liability and without being subject to damages, or prejudice to its other rights under this Agreement, disable Customer's and/or any Authorized Users' access to the Products for any breach or suspected breach of this Section 3.4.

3.5 Customer shall ensure that all Authorized Users comply with the terms of this Agreement. Customer shall be primarily responsible for all activities conducted under its or its Authorized Users' logins. Without prejudice to Qubit's other rights under this Agreement, Customer shall notify Qubit immediately in the event that any Authorized User is in breach of this Agreement and shall ensure that such Authorized User immediately discontinues its use of the Products. Customer shall reasonably cooperate with Qubit to remedy any misuse of the Script or the Products or any conduct that is or would constitute a breach of the terms of this Agreement.

#### 4. ADDITIONAL SERVICES

4.1 Qubit shall make available to Customer an appropriately trained employee or contractor to carry out such services as are mutually agreed between the parties in a Sales Order Form (the "**Additional Services**"). Such Qubit resource shall be provided during Normal Working Hours (unless otherwise specifically agreed in a Sales Order Form) on the number of Days agreed in the Sales Order Form. For the purpose of this Section 4, a "**Day**" means 8 Normal Working Hours.

4.2 If Customer wishes to purchase any Additional Services, the parties may agree to mutually execute one or more separate statements of work (each a "**Statement of Work**") containing the relevant terms and conditions. Unless otherwise identified in a Statement of Work, all Additional Services must be used within the Initial Subscription Term or applicable Renewal Period. Any portion of the Additional Services not used within such period will be automatically forfeited, with no further action required of either party, and Customer will not be entitled to any refund or credit for any prepaid but unused fees. Customer may not apply any portion of any unused Additional Services or fees paid, for any products or services other than those stated in the Sales Order Form.

4.3 Qubit shall provide the Additional Services with reasonable skill and care and in accordance with generally recognized commercial practices and standards. This warranty is exclusive and in lieu of all other warranties and conditions, whether express or implied. Nothing in any description of Additional Services is intended as an additional warranty of any sort and no conditions, warranties or other terms apply to any Additional Services (including any software or code) supplied by Qubit unless expressly set out in this Agreement, the Statement of Work, or the Sales Order Form. No implied conditions, warranties or other terms apply (including any implied terms as to satisfactory quality, fitness for purpose or conformance with description). Qubit will re-perform Additional Services to remedy any breach of warranty.

4.4 If either party requests a change to the scope or execution of the Additional Services Qubit shall, within a reasonable time, provide a written estimate to the Customer of: (a) the likely time required to implement the change; (b) any necessary variations to Qubit's charges arising from the change; and (c) any other impact of the change on this Agreement. If the Customer wishes Qubit to proceed with the change, Qubit has no obligation to do so unless and until the parties have agreed in writing to all of the necessary variations to its charges, the Additional Services, the Sales Order Form and any other relevant terms of this Agreement to take account of the change. Notwithstanding the foregoing, Qubit may, from time to time on reasonable notice, change the Additional Services in order to comply with any applicable regulatory or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Additional Services or materially adversely affect the Customer.

4.5 Qubit shall deliver all Additional Services from Qubit's offices unless otherwise mutually agreed between the parties. If any Qubit resource is required to travel to Customer's premises or any other third party premises to deliver the Additional Services to Customer, Customer shall be responsible for Qubit's reasonable expenses.

#### 5. PERSONAL DATA AND CUSTOMER DATA

5.1 Customer acknowledges and agrees that it is Customer's responsibility to ensure that Customer's use of the Products complies with all Data Protection Laws applicable to Customer (including, in particular, in respect of the placing and use of cookies upon which the Products rely and the capturing of any consent to cookies required to be obtained from the relevant end user) and that Customer's privacy policy(ies) permit all activities contemplated under this Agreement.

5.2 During the Initial Subscription Term and thereafter Customer may request that Qubit process personal data for the purposes of providing the Products to Customer and/or to allow Qubit to exercise its rights and fulfill its obligations under this Agreement (but Customer will not request Qubit to process any sensitive personal data or information subject to the Health Insurance Portability and Accountability Act or Payment Card Industry Data Security Standard or otherwise provide such information to Qubit). In so doing, Qubit shall only process personal data on behalf of Customer in accordance with the Terms and conditions of this Agreement and Customer's written instructions as it may arise.

5.3 If Customer requests Qubit to transfer Customer Data from a Customer Site (or any other platform on which the Products run) to any third party, then the Customer shall be solely responsible and liable for this transfer, and shall indemnify, defend, and hold Qubit harmless for such transfer and for any liability that arises from such transfer.

5.4 As between the Parties, Customer shall own all right, title and interest in and to any Customer Data and Customer Confidential Information. Customer grants to Qubit the non-exclusive, worldwide right to copy, adapt, transmit, communicate, display, distribute and create compilations and derivative works of the Customer Data for the purpose of providing the Products hereunder and to improve or enhance the Products. This license includes use of Customer Data to compile, use and disclose anonymous, aggregated statistics that include Customer Data, provided that no such information will directly identify and cannot reasonably be used to identify Customer or Customer's Users. Customer shall be solely responsible for ensuring that Customer has obtained all necessary third party consents and made all required disclosures in connection with the foregoing grant.

5.5 Customer acknowledges and agrees that Customer Data may be transferred outside of the country or other jurisdiction in which Customer is located. In addition, Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability and copyright of all Customer Data.

5.6 Customer shall not commit any act or omit to act in a way which places or is likely to place Qubit in breach of any Data Protection Laws or any other applicable laws or regulations.

5.7 Qubit utilizes industry standard systems and procedures to ensure the security and confidentiality of Customer Data and to protect against accidental or unlawful destruction or accidental loss, alteration, or unauthorized disclosure or access to Customer Data. Qubit reserves the right to, and may update or modify such measures from time to time provided that such updates or modifications do not result in any material degradation to the security of the Products or Customer Data.

5.8 Customer hereby warrants and represents that it has all right, title and interest in and to the Customer Data and has the proper permissions and abilities to transfer such information.

5.9 In the event of any loss or damage to Customer Data, Customer's sole and exclusive remedy shall be for Qubit to use commercially reasonable efforts to restore, if practicable, the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Qubit in accordance with its standard archiving procedures. Qubit shall have no liability whatsoever to Customer for any theft, loss or misuse of Customer Data, except to the extent that such liability is caused by Qubit's gross negligence.

## **6. CHARGES AND PAYMENT**

6.1 The Fees will be invoiced and paid in advance for the Initial Subscription Term and each Renewal Term.

6.2 The Fees for the Initial Subscription Term shall be the prices set out in the Sales Order Form. The Fees during any Renewal Term shall be determined in accordance with Section 6.3. Customer acknowledges and agrees that if the number of Pageviews detailed in the Sales Order Form is not accurate or ceases to be accurate by a margin of 10%, or if Customer's usage is continually excessive, unfair, or is not consistent with the usage Qubit would typically expect on the Customer's current package, Qubit may at any time during the Term, on notice and at its sole option, modify the Fees to be proportionate to the actual number of Pageviews on the Customer Site (such increase in Fees being the "Overage Charge"). In extreme cases Qubit may suspend or terminate the Customer's ability to access the Products. The Overage Charge shall be invoiced to Customer monthly in arrears, and payment is due upon receipt. The Overage Charge will be proportional to the amount by which the actual number of Pageviews exceeds the previously estimated number of Pageviews, such that the total increased amount paid by the Customer in connection with such Pageviews is proportional to the amount by which Pageviews have exceeded the estimate.

6.3 Qubit may adjust the Fees for any additional Renewal Term, by giving written notice to Customer at least seventy-five (75) days before the start of each Renewal Term, to: (a) remove any discounts granted during the Initial Subscription Term or then current Renewal Term, as applicable; (b) reflect increases in the number of Pageviews on a Customer Site; (c) reflect changes in the standard rate at which Qubit provides services on a time and materials basis; and/or (d) increase the Fees charged to the Customer by up to 7% or the Consumer Price Index measure of inflation (whichever is greater), any such price increase shall be effective for each Renewal Term.

6.4 Customer will pay each invoice submitted by Qubit: (a) within 30 days of the date of the invoice; and (b) in full and cleared funds. Time is of the essence for any payment due to Qubit and a condition precedent to services being continued in Qubit's sole discretion.

6.5 If Customer requires a purchase order number on its invoice, Customer will select "Yes" in the purchase order section of the Sales Order Form and issue a purchase order to Qubit. If Customer requires a purchase order number, and fails to provide the purchase order to Qubit, then Qubit will not be obliged to provide the Products until the purchase order has been received by Qubit. If Customer fails to provide a purchase order, then Customer waives any purchase order requirement and (i) Qubit will invoice Customer without a purchase order number; and (ii) Customer will pay invoices without a purchase order number referenced. The parties agree that none of the terms and conditions in any purchase order issued by Customer will apply to or modify this Agreement or any Sales Order Form, and that any conflicting terms or conditions in the Customer's purchase orders shall be null and void.

6.6 If Customer fails to make payment of any and all Fees within thirty (30) days of the invoice becoming due, then, without liability to Customer or prejudice to any of Qubit's other rights and remedies: (a) Qubit may cease to provide and/or disable Customer's and Authorized Users' access to all or part of the Products and Qubit shall be under no obligation to provide any or all of the Products or Additional Services while the invoice(s) concerned remain unpaid; and (b) Qubit shall be entitled to recover all reasonable attorney's fees and costs (including, but not limited to any court costs, witness costs and appellate costs, if any) and other reasonable costs associated with the collection of such amounts; and (c) charge Customer interest on the overdue amount(s) on a daily basis at a rate equal to the lesser of one and one half percent (1½%) per month or the maximum amount allowed by law, commencing on the due date and continuing until fully paid, whether before or after judgment.

6.7 All amounts and Fees stated or referred to in this Agreement: (a) shall (unless otherwise detailed in the Sales Order Form) be payable in US dollars; (b) are exclusive of any applicable taxes or charges (including any sales or other transaction-based tax, or value added or non-resident withholding tax), which shall (if applicable) be added to Qubit's invoice at the appropriate rate and be payable by Customer; and (c) are non-cancelable and all payments are non-refundable. Are non-cancelable and all payments are non-refundable

6.8 Default: In the event of a default of this Agreement by Customer, which shall be defined as: (a) Customer's inability to pay any sums due and owing under this Agreement; or (b) a breach by Customer of any warranty or representation, then: (c) All sums due and owing under this Agreement, the Service Level Agreement and the Sales Order Form for the Term shall immediately become due and owing to Qubit; and (d) Qubit may immediately suspend all Products and/or Additional Services, without notice or further opportunity to cure in its sole discretion.

## 7. PROPRIETARY RIGHTS

7.1 Customer acknowledges and agrees that Qubit and/or its licensors or partners own all Intellectual Property Rights and any other rights in or arising out of or in connection with the Products and the Generally Applicable Know-How. Except as expressly stated in this Agreement, this Agreement does not grant Customer any Intellectual Property Rights or any other rights or licenses in respect of the Products or the Generally Applicable Know-How, and Customer shall not acquire or claim any rights in respect of the same by virtue of the rights granted under this Agreement. Qubit expressly reserves all right, title and interest in and to any Intellectual Property Rights not specifically granted to Customer herein. Qubit grants no license, whether implied or express, except as specifically set forth in this Agreement and/or any Sales Order.

7.2 Qubit acknowledges and agrees that Customer (or Customer Affiliate(s) as applicable) and/or its licensors own all Intellectual Property Rights and any other rights in Customer Data and the Customer Site. Except as expressly stated in this Agreement, this Agreement does not grant Qubit any Intellectual Property Rights or any other rights or licenses in respect of Customer Data or the Customer Site and Qubit shall not acquire or claim any rights in respect of Customer Data or the Customer Site by virtue of the rights granted under this Agreement.

7.3 (i) As between Customer and Qubit, Customer will retain all ownership rights in and to all copyrightable works, deliverables, designs, inventions, know-how, software, techniques, trade secrets, work product and other materials created by or for Customer without any contribution by Qubit ("**Customer Materials**"). Subject to the terms of this Agreement, Customer grants Qubit a non-exclusive, non-transferable, worldwide, royalty-free license to reproduce, perform, display, distribute, create derivative works of, and otherwise use the Customer Materials in connection with providing the Product and/or Additional Services during the Subscription Term and otherwise performing its obligations under this Agreement. (ii) As between Customer and Qubit, Qubit will retain all ownership rights in and to all copyrightable works, deliverables, designs, inventions, know-how, software, techniques, trade



secrets, work product and other materials created by or for Qubit, (either alone or jointly with Customer or others) either existing at this time or later developed, and provided to Customer under the Sales order Form, and any derivative works thereof, excluding any incorporated Customer Confidential Information (collectively, "**Qubit Materials**"). Subject to the terms of this Agreement, Qubit grants Customer a non-exclusive, non-transferable, worldwide, royalty-free license to reproduce, perform, display, distribute, create derivative works of, and otherwise use the Qubit Materials in connection with receiving the Product and/or Additional Services during the Subscription Term and otherwise performing its obligations under this Agreement.

## 8. CONFIDENTIALITY

8.1 The Receiving Party shall hold all Confidential Information in confidence and, unless required by law, not make Confidential Information available to any third party, or use the Confidential Information for any purpose other than the performance of its obligations or exercise of its rights under this Agreement.

8.2 Without prejudice to Section 8.1, the Receiving Party may disclose Confidential Information to those of its affiliates, employees, agents and advisors (together the "**Representatives**") who need to know such Confidential Information solely in connection with the implementation of this Agreement, provided that the Receiving Party is at all times responsible for its Representatives' compliance with the obligations set out in this Agreement. Each party shall procure that its Representatives are bound by confidentiality agreements applicable to the Confidential Information supplied to the Receiving Party on terms no less onerous than those contained in this Section 8. Subject to the foregoing, neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party, provided that such loss, destruction, alteration or disclosure was not caused or authorized by the Receiving Party.

8.3 The Disclosing Party hereby represents and warrants that it has the right and authority to disclose the Confidential Information to the Receiving Party (or its Representatives).

8.4 The Receiving Party agrees that the Confidential Information is and shall at all times, unless otherwise notified, remain the exclusive property of the Disclosing Party and the Receiving Party shall not acquire, by implication or otherwise, any right, title, interest or license in or to any Confidential Information or to any intellectual property rights, if any, embodied in such Confidential Information. The Receiving Party acknowledges and agrees that Disclosing Party may be irreparably harmed by a breach of the terms of this Agreement and that damages may not be an adequate remedy. The Disclosing Party shall be entitled to seek an injunction or specific performance for any threatened or actual breach of the provisions of this Agreement by the Receiving Party or any other person receiving Confidential Information pursuant to this Agreement.

## 9. INDEMNITY

9.1 Qubit shall, subject to the remainder of this Section 9, defend Customer, and its officers, directors and employees, against any claim that the Products infringe any UK, EU or United States patent effective as of the Effective Date only or any other Intellectual Property Rights, provided that: (a) Qubit is given prompt notice of any such claim; (b) Customer provides reasonable co-operation to Qubit in the defense and settlement of such claim, at Qubit's reasonable expense; (c) Qubit is given sole authority to defend or settle the claim; and (d) except with Qubit's prior written permission, Customer makes no admission and takes no action which would compromise Qubit's defense or settlement of the claim or any counterclaim by Qubit.

9.2 In the defense or settlement of any claim, Qubit's sole obligation (in addition to the payment of any judgment or settlement) shall be to: procure the right for Customer to continue using the Products, replace or modify the Products so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on two (2) Business Days' notice to Customer, in which case Qubit shall repay to Customer any prepaid but unused Fees as at the date of termination, but without any additional liability or obligation to pay damages or other additional costs to Customer. Under no circumstances shall Qubit indemnify Customer or be liable to or on behalf of Customer beyond what is stated in the foregoing sentence.

9.3 Notwithstanding the foregoing, in no event shall Qubit, or its employees, agents and sub-contractors, be liable to or obligated to defend Customer under Section 9.1 to the extent that the alleged infringement is based on: (a) a modification of the Products or Script by anyone other than Qubit or Qubit's authorized sub-contractors; (b) Customer's use of the Products in a manner contrary to the terms of this Agreement, or the reasonable instructions given to Customer by Qubit; or (c) any combination of services, software or other materials with the Products (including the Script), to the extent the infringement relates to such combination.

9.4 The foregoing constitutes Customer's sole and exclusive rights and remedies, and Qubit's (including Qubit's employees', agents' and sub-contractors') entire obligations and liability to Customer, for infringement or alleged infringement of any patent or other Intellectual Property Right.

## 10. LIMITATION OF LIABILITY

10.1 This Section 10 sets out the entire financial liability of either party (including any liability for the acts or omissions of either party's employees, agents or sub-contractors) to the other, including in respect of: (a) any breach of any obligation (whether implied or express) arising out of or in connection with this Agreement; (b) any use made by Customer or Authorized Users of the Products (including the Script) or any part of them; and (c) any representation, statement or tortious act or omission (including negligence) or breach of statutory duty arising under or in connection with this Agreement.

10.2 Customer assumes sole responsibility (and Qubit shall have no liability) for: (a) results obtained from the use of the Products by Customer and/or Authorized Users and for conclusions drawn from such use; (b) integration of the Script with Customer Site; (c) any damage caused by errors or omissions in any information, instructions or scripts provided to Qubit by Customer in connection with the Products; or (d) any content published on a Customer Site by, or with the approval of, Customer or any actions taken by Qubit at Customer's direction.

10.3 Subject to Section 10.4, neither party shall under any circumstances whatsoever be liable to the other for any: (a) loss of profits, revenues or opportunity costs; (b) loss of business or business opportunities; (c) loss or depletion of goodwill and/or similar losses or injuries; (d) loss or corruption of data or information (including Customer Data), subject to Section 5.7; (e) pure economic loss; (f) the acts or omissions of Qubit's personnel acting outside the scope of their authority; (g) special, indirect, punitive or consequential loss, costs, damages, charges or expenses howsoever arising under this Agreement.

10.4 Nothing in this Agreement excludes the liability of either party for: (a) fraud, gross negligence or willful misconduct; or (b) any other liability which may not be limited or excluded by applicable law.

10.5 Subject to Section 10.4, each party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising under or in connection with this Agreement or the performance or contemplated performance of this Agreement shall be limited to the total Fees actually paid by Customer for the Products under the Sales Order Form incorporated in this Agreement during the 12 months immediately preceding the date on which the claim arose.

## 11. TERM AND TERMINATION

11.1 Subject always to either party's right to terminate pursuant to this Section 11: (a) this Agreement shall commence on the Effective Date and shall continue for the Initial Subscription Term; and (b) after the Initial Subscription Term, this Agreement shall automatically renew for successive periods of twelve (12) months (each a "**Renewal Term**"), unless either party gives written notice to the other to terminate this Agreement not less than sixty (60) days before the end of the Initial Subscription Term or any Renewal Term (as the case may be), in which case this Agreement shall terminate at the end of the Initial Subscription Term or Renewal Term (as applicable)

11.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this Agreement without liability to the other immediately on giving written notice to the other if: (a) (i) the other party is in material breach of this Agreement where the breach is incapable of remedy; or (ii) the other party is in material breach of this Agreement where the breach is capable of remedy and the breaching party fails to remedy that breach within thirty (30) days after receiving written notice of such breach; (b) the other party enters into an arrangement for an assignment for the benefit of its creditors, goes into administration, receivership or administrative receivership, is declared bankrupt or insolvent or is dissolved or otherwise ceases to carry on business; or (c) any event analogous to those described in clause (b) above happens to the other party in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets.

11.3 On termination of this Agreement for any reason: (a) all licenses and other rights granted by Qubit under this Agreement shall immediately terminate; (b) Customer shall immediately pay to Qubit all outstanding unpaid invoices and interest and, in respect of Products rendered but for which no invoice has been submitted, Qubit will submit an invoice, which will be payable by Customer immediately on receipt; (c) each party shall (and Customer shall procure that any applicable Authorized User shall), return or destroy as promptly directed by the other party and make no further use of any equipment, property, Confidential Information, the Products (including the Script) and other items (and all copies of them) belonging to the other party; (d) Qubit will have no further obligation to store and/or make available Customer Data and may delete the same at any time from and including the date thirty (30) days after the termination or expiry of this Agreement, without further notice to Customer; and (e) the accrued rights of the parties as at termination, and Sections 1, 3.2, 3.4, 3.5, 5.2 and 6 through 12, will survive any expiration or termination of this Agreement.

## 12. GENERAL

12.1 Neither party shall have any liability to the other under or in connection with this Agreement if it is prevented from, or delayed in performing, its obligations under this Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control (a "**Force Majeure Event**"), including strikes, lock-outs or other industrial disputes (whether involving the workforce of either party to this Agreement or any other party), failure of a utility service or transport network, act of God, war, riot, internet interruptions, civil commotion, malicious damage, compliance with any law or governmental order, rule, change in law, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors. If a Force Majeure Event prevents, hinders, or delays a party's performance of its obligations under this Agreement for a continuous period of more than 6 months, either party may terminate this Agreement immediately on written notice to the other party.

12.2 Qubit shall be permitted to identify Customer as a Qubit Customer on its website or other marketing materials and accordingly, Customer hereby grants to Qubit the right to use and display Customer's name, logo and/or any other identifying words or marks associated with Customer, in whole or in part, and in any media for the sole purposes of identifying Customer as a customer of Qubit.

12.3 The parties are independent contracting parties and owe no fiduciary or other duties to each other except as set forth in this Agreement and any Sales Order. Neither party has, or will hold itself out as having, any right, title or authority to incur any obligation on behalf of the other party, unless expressly authorized in writing to do so. The parties relationship in this Agreement shall not be construed as a joint venture, partnership, franchise, employment or agency relationship, or as imposing any liability upon either party that otherwise might result from such a relationship.

12.4 Customer recognizes that Qubit always seeks to innovate and find ways to improve the Products with new features and functions. Customer agrees that Qubit may therefore change the Products (i) without notice provided such changes do not materially adversely affect the nature or quality of the Products, or (ii) on written notice to Customer where such changes will materially adversely affect the nature or quality of the Products, provided that Customer shall have the right to terminate the Agreement on giving written notice to Qubit not more than one (1) month following any such change taking effect. Subject to the preceding sentence, no variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

12.5 Customer may submit feedback or ideas about the Products, including how to improve the Products or any other service offered by Qubit ("**Feedback**"). Customer acknowledges that no further consideration is payable as a result of such Feedback, and that Qubit is free (but not obligated) to use the Feedback on a non-exclusive and non-confidential basis for any business purpose, during or after the Subscription Term.

12.6 A waiver of any right under this Agreement is effective only if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under this Agreement or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

12.7 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected. If a provision of this Agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.8 This Agreement, and any documents referred to in it, constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter (including any Customer purchase orders). Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract), as expressly provided in this Agreement. Each party represents and warrants that in entering into this Agreement it has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings (or the failure or omission of the other party to make statements, assurances, representations or undertakings) (together "**Pre-Contractual Statements**") other than what is expressly set forth in this Agreement. Each party waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements, including any claim it was induced into entering into this Agreement or accepting its terms based on any Pre-Contractual Statements.

12.9 Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party, except that either party may assign this Agreement as a whole without such consent to an entity of good standing (other than any direct competitor of the other party) capable of complying with the rights and obligations under this Agreement succeeding to all or substantially all of such assigning party's assets or business.

12.10 A person who is not a party to this Agreement shall not have any rights under or in connection with it. No third party beneficiaries are created by this Agreement.

12.11 All notices must be in English, in writing, addressed (a) in the case of Qubit to [legal@gubit.com](mailto:legal@gubit.com), and (b) in the case of Customer to the postal address or email address detailed in the Sales Order Form, or such other address as either party has notified the other in accordance with this clause. All notices shall be deemed to have been given on receipt as verified by written or automated receipt or electronic log (as applicable).

12.12 If any dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (a "**Dispute**") the parties shall use all reasonable endeavors to resolve the Dispute in good faith within sixty (60) days of such Dispute arising. Unless otherwise agreed in writing, all discussions shall be conducted without prejudice to the rights of each of the parties. If the parties fail to agree upon the terms of a settlement within sixty (60) days (or such other time as the parties may agree) either party may, subject to this Section 12.12, commence arbitration. All disputes and controversies arising under or in connection with this Agreement and any Sales Order (including non-contractual disputes and claims) shall be submitted to final and binding arbitration before a single arbitration under the JAMS arbitration rules. The arbitrator will conduct such proceedings efficiently and expeditiously, and discovery will be limited to the exchange of relevant documents and names of witnesses. The arbitrator is empowered to grant preliminary relief and shall decide any disputes concerning arbitrability. The arbitrator shall conclude any arbitration hearing within 120 days of being empaneled, and shall rendered a reasoned decision within 30 days of the conclusion of the hearing. The parties' agreement to arbitrate and any arbitral award shall be enforced under the Federal Arbitration Act and may be enforced in the federal or state courts located in New York, New York. The parties irrevocably agree and unconditionally consent to the exclusive jurisdiction and venue of said courts for such purposes. Unless this Agreement has already been terminated by the date of notice of the Dispute, and without prejudice to either party's right to terminate under Section 11.2, Qubit shall continue to supply the Products as set forth herein and Customer shall continue to make payments in accordance with Section 6 while a Dispute is pending, and any cure period will be tolled during the pendency of a Dispute. Nothing in the foregoing shall prevent any party from seeking emergency or injunctive relief to maintain the status quo pending resolution of the parties' Dispute. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY,

12.13 In the event of any dispute among the parties hereto with respect to any of the terms or provisions in Section 6 (Charges and Payment) of this Agreement, the non-prevailing party shall pay or reimburse the prevailing party for all fees and expenses incurred with respect thereto, including without limitation any legal and attorney's fees and expenses incurred by the prevailing party in connection therewith.

#### **Exhibit A**

#### **(SUPPORT AND SERVICE LEVEL AGREEMENT)**

This is Exhibit A to Qubit's Master Service Agreement (the "**Agreement**"). Capitalized terms not defined in Section IV of this exhibit, or otherwise herein, have the meaning indicated in the Agreement and its associated Sales Order Form(s). Unless otherwise provided herein, this SLA is subject to the terms of the Agreement. Qubit reserves the right to change the terms of this SLA in accordance with the Agreement.

#### **I. SUPPORT CONTACTS & QUBIT COMMUNITY:**

- A. Customer will appoint up to five (5) designated support contact persons knowledgeable regarding the Products and Additional Services (the "Designated Contacts") for purposes of contacting Qubit's support team about technical support issues with the Products and Additional Services, including reporting such issues via Qubit's designated support portal / channel. Qubit provides 24x7x365 unlimited access to the Qubit Help Desk team for the Designated Contacts.

- B. Customer must opt-into Qubit's online community site to receive certain important information regarding updates and other changes to the Service, and to take other required action relating to support and use of the Service.
- C. The commitments under this exhibit do not apply to customizations, enhancements or other non-standard modifications to the Products or Additional Services requested or made by Customer.

**II. SUPPORT FOR CUSTOMERS:**

**Qubit will provide the following technical support for all Customers:**

1. **Response Times:** Qubit bases its response times and the actions it takes to resolve problems on an assessment of the impact of the reported technical issue. The more serious the impact, the higher the assigned priority. For all support issues relating to Customer, Qubit will respond in accordance with Table 1:

**TABLE 1**

<b>Priority**</b>	<b>Request Response Time</b>	<b>Resolution Time***</b>
P1	1 hour	4 hours
P2	1 hour	8 hours
P3	4 hours	72 hours
P4	1 business day	Next or a later major release

*\*\*The **Priority Levels** are defined in Section II(2) below.*

*\*\*\*"Resolution Time" is the maximum time within which Qubit will resolve (via Qubit's normal support channels) to each support issue reported by Customer.*

**2. Issue Severity Level Definitions**

(i) P1: **Mission Critical.** Critical issue affecting all users of the Customer Site, including system unavailability and data integrity issues with no workaround available.

(ii) P2: **Urgent.** Essential services are significantly degraded and/or impacting significant aspects of the Customer Site. The issue is persistent and affects many users and/or major functionality. No reasonable workaround available.

(iii) P3: **Important.** Services are noticeably impaired, but most business operations continue as normal. Some but not all users are affected. Short-term workaround is available, but not scalable.

(iv) P4: **Minor.** The support request consists of "how to" questions, enhancement requests, or documentation questions. This may include routine technical issues, information requested on application capabilities, navigation, installation or configuration, or a bug affecting a small proportion of users on the Customer Site.

**3. Assignment of Severity Levels:** Qubit will determine the Severity Level assigned to each support issue in its reasonable discretion, but taking into consideration the Severity Level input or suggested by Customer.

**4. Notification:** Customer must use the Qubit Help Desk to submit problem reports and Qubit shall provide technical support and answer specific information requests in the manner set out below. Customer understands that Qubit will only provide support via the Qubit help desk in accordance with this SLA. In the event that Customer experiences any problem with respect to the Products that is not caused by a Permitted Downtime, Customer may notify the Qubit Help Desk team (see Qubit Help Desk Information above). Such notification of the problem must include a clearly written description of the problem(s) and any steps that Customer can reasonably identify that would allow Qubit to replicate the problem(s). The problem shall be promptly logged upon Qubit's receipt of clear notification of the problem. Qubit shall, at all times acting reasonably and in good faith, assign a priority, generally following the classifications found in Table I above, and Qubit shall use commercially reasonable endeavors to respond to the problem in accordance with the time frames set forth in Table I. Qubit shall not re-assign a priority of a problem without the prior written consent of Customer.

#### Telephone

United Kingdom: +44 (0) 203 328 0799

United States: +1 (888) 601-7522

France: +33 805088869

Spain: +34 900839298

Portugal: +35 1800180431

Germany: +49 8007237993

Ireland: +353 1800817468

#### Email

[customersupport@qubit.com](mailto:customersupport@qubit.com)

**5. Case Priority P1 and P2 Response and Resolution:** Qubit shall confirm to Customer receipt of the request within the Request Response Time of such a request. If a Case Priority P1 or P2 request cannot be corrected within the Resolution Time after the Customer makes the initial request for support, Qubit will: (a) immediately escalate to more senior stakeholders within Qubit's engineering or Customer Success team, as appropriate; (b) take and continue to take the actions which will most expeditiously resolve the request; and (c) provide regular reports to the Customer of the steps taken and to be taken to resolve the request, the progress to correct, and the estimated time of correction until the request is resolved.

**6. Case Priority P3 and P4 Response and Resolution:** Qubit shall confirm to Customer receipt of the request within the Request Response Time of such a request. If a Case P3 or P4 request cannot be corrected within the Request Resolution Time after the Customer makes the initial request for support, Qubit and Customer will mutually agree upon a schedule within which to resolve the request.

**7. Resolution of issues.** Resolution of a technical support issue is defined as accomplishing any one of the following: (i) providing a reasonable solution to the issue; (ii) providing a reasonable work-around to the issue; (iii) determination by Qubit that the issue is an enhancement request and forwarding the request to Qubit Products Management for future consideration; or (iv) escalation by Qubit Client Care of the incident/product defect to Qubit Engineering for review. Qubit Client Care will make reasonable efforts to resolve the issue but Qubit cannot guarantee that every issue will be resolved.

**8. Remedies for Breach:** If Qubit fails to meet the Response Time Commitments in Table 1 above, Customer's exclusive remedy and Qubit's sole obligation will be for Qubit to make commercially reasonable efforts to respond to the issue promptly after Customer notifies Qubit that it failed to meet the Response Time Commitment. If Qubit fails to meet the relevant Resolution Time commitments for any issue not caused by Permitted Downtime five (5) times during a calendar month, Customer's exclusive remedy and Qubit's sole obligation will be for Customer to terminate the applicable Sales Order Form and receive a refund, on a pro rata basis, of any Subscription Fees paid by the Customer that are unused as of the termination effective date.

### III. SERVICE LEVELS & SERVICE CREDITS:

#### 1. Uptime Commitment

(a) **Data Collection.** The target Uptime Percentage for Data Collection shall be Ninety Nine Percent (99%) (the "Uptime Commitment"). Subject to the exclusions described in Section III (3) below, the "Uptime Percentage" shall be calculated by subtracting from 100% the percentage of 1-minute periods during any quarterly cycle (i.e., 3 calendar months) in which Customer's ability to use the Network to permit collection of Customer Data is Unavailable out of the total number of minutes in that quarterly cycle. "Unavailable" and "Unavailability" mean that, in any 1-minute period, all data collection requests from the Customer Site were unsuccessful (each a "Failed Connection"); provided, however, that no Failed Connection will be counted as a part of more than one such 1-minute period (e.g. a Failed Connection will not be counted for the period 12:00:00-12:00:59 and the period 12:00:30-12:01:29). The Uptime Percentage for Data Collection shall be measured based on the industry standard monitoring tools Qubit uses.

(b) **User Interface.** The target Uptime Percentage for User Interface shall be Ninety Nine Percent (99%) (the "Uptime Commitment"). Subject to the exclusions described in Section III (3) below, the "Uptime Percentage for User Interface" is calculated by subtracting from 100% the percentage of 1-minute periods during any quarterly cycle (i.e., 3 calendar months) in which Customer's ability to access the Qubit online user interface is Unavailable out of the total number of minutes in that quarterly cycle. "Unavailable" and "Unavailability" mean that, in any 1-minute period, all connection requests made by Customer to access the Qubit online user interface were unsuccessful (each a "Failed Connection"); provided, however, that no Failed Connection will be counted as a part of more than one such 1-minute period (e.g. a Failed Connection will not be counted for the period 12:00:00-12:00:59 and the period 12:00:30-12:01:29). The Uptime Percentage for User Interface shall be measured based on the industry standard monitoring tools Qubit uses.

2. **Notification of Downtime:** Customer shall, in order to be eligible for any service availability credits as are set forth in this Section III, notify Qubit in writing about any Failed Connection within ten (10) days of experiencing such downtime.

#### 3. Exclusions from Uptime Percentage

Notwithstanding anything to the contrary in this exhibit, any Unavailability issues resulting from or connected to any Permitted Downtime will be excluded from calculation of the Uptime Percentage.

Customer may elect to use certain billable Qubit professional services to resolve issues associated with the excluded areas listed in this subsection. Such services may require Customer to complete a network assessment, and/or give Qubit access to Customer's network, in order to diagnose the issue.

#### 3. Service Credits

(a) If Qubit does not meet the Uptime Commitment with respect to any particular calendar quarter (i.e., the actual Uptime Percentage was below 99.0%), and Customer is negatively impacted thereby, then as Customer's sole and exclusive remedy, and only upon Customer's written request in accordance with this Section III, Qubit will provide to Customer a service credit ("**Service Credit**") pursuant to Table 2 below:

#### TABLE 2



<u>Actual Uptime Percentage:</u>	<u>Service Credit Percentage:</u>
≥ 98.0% but < 99.0%	4% of Quarterly Fees
≥ 97.0% but < 98.0%	8% of Quarterly Fees
≥ 96.0% but < 97.0%	10% of Quarterly Fees
≥ 94.0% but < 96.0%	12% of Quarterly Fees
≥ 90.0% but < 94.0%	15% of Quarterly Fees
< 90.0%	25% of Quarterly Fees

(b) The Service Credit shall be calculated against the quarterly fees due to Qubit, which shall be calculated by dividing the annual Subscription Fees (as further described on the Sales Order Form) by four ("Quarterly Fees"), and shall be deducted against future fees.

(c) Subject to the termination rights set forth in the Agreement, any credits provided pursuant to this SLA will constitute Qubit's sole liability and Customer's sole and exclusive remedy for any failure to achieve the Uptime Percentage. Failure to achieve the Uptime Commitment shall result in the Service Credit Percentage applicable to each Product, subject to a maximum cumulative Service Credit Percentage of 33% of total Quarterly Fees (regardless of the number of individual service failures in the applicable month). In the event that the actual Uptime Percentage is less than 90.0%, Qubit will be deemed to be in material breach of the Agreement.

**4. Service Credit Process:** To receive a Service Credit, Customer must submit a request by sending an email to legal@qubit.com. To be eligible, the credit request must: (a) include the dates and times of each Unavailability incident that Customer claims to have experienced, along with sufficient details to enable Qubit to verify the information; and (b) be received by Qubit within ten (10) Days after the last Failed Connection that is part of Customer's Service Credit claim. If Customer is past due with respect to any payment obligation, or otherwise in material breach of any contractual obligation to Qubit, Customer is not eligible for any Service Credits. Service Credits will be issued to Customer within sixty (60) days after Qubit confirms that Customer qualifies for the Service Credit under this section.

#### **SECTION IV. DEFINITIONS**

**"Emergency Maintenance Period"** means the period of time elapsed during any maintenance performed on the Network, which maintenance is required as a result of conditions beyond Qubit's reasonable control. Qubit will provide Customer with at least thirty (30) minutes advance notice for emergency maintenance. Emergency maintenance may occur at any time, as Qubit deems necessary. Emergency maintenance notifications will be sent to a single Customer email address. It is Customer's sole responsibility to ensure the provided email address is current and fully functional. Customer's email address for notification purposes must be communicated to Qubit in writing prior to the issuance of any emergency maintenance notifications by Qubit.

**"Network"** means the network facilities that host the Products and related software (hosted either internally on Qubit's network or externally on remote server sites owned and operated by third party providers).

**"Permitted Downtime"** means the following: (a) Inoperability due to any scheduled or emergency maintenance (occurring during the Scheduled Maintenance Periods or Emergency Maintenance Periods); (b) Problems caused by Customer or its telecommunications and Internet services; (c) Problems caused by software or hardware not provided or controlled by Qubit or any third-party service to which customer subscribes (e.g., web-hosting services); (d) Problems due to Force Majeure events, as provided in the Agreement, and acts of war or nature; (e) Problems due to acts or omissions of Customer, its agents, employees or contractors; (f) Problems due to defects in software provided by Customer that Qubit could not have discovered through the exercise of reasonable diligence

prior to the failure; (g) Problems due to Customer's failure to implement changes in equipment or software reasonably recommended by Qubit in writing as essential to maintaining service levels following a Customer directed change in the operating environment; (h) Inoperability due to a Customer driven increase in demand for system resources that has not allowed Qubit a reasonable time to accommodate; (i) Problems due to operation under a disaster recovery plan (assuming Qubit has complied with its material obligations with respect thereto); (j) Provision of the Products after expiration of the Agreement; (k) Any failures of Customer to abide by the Notification sections of this SLA; (l) Negligent or intentional misuse of the Product or Additional Services by Customer; (n) "Beta", "Tester" or "limited availability" products, features and functions identified as such by Qubit; (o) Software that has been subject to unauthorized modification by Customer; and (p) Qubit's suspension or termination of the Product and Additional Services in accordance with the Agreement and/or its associated Sales Order Form.

"Scheduled Maintenance Period" means the period of time elapsed during any scheduled maintenance performed by Qubit on the Products or the Network. Qubit will provide Customer with at least one (1) day advance notice for standard maintenance. Qubit will use commercially reasonable efforts to schedule maintenance during hours other than during regular business hours. Scheduled maintenance notifications will be sent to a single Customer email address. It is Customer's sole responsibility to ensure the provided email address is current and fully functional. Customer's email address for notification purposes must be communicated to Qubit in writing.