**OPENEXCHANGE, INC.**

**MASTER AGREEMENT**

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| --- | --- |
| **OpenExchange:** | OpenExchange, Inc. |
| **Address:** | 55 Old Bedford Road  Suite 103  Lincoln, MA 01773 |
| **Contact:** |  |
| **Telephone:** | [•] |
| **Email:** | [•] |
| **Customer:** | [•] |
| **Address:** | [•] |
| **Contact:** | [•] |
| **Telephone:** | [•] |
| **Email:** | [•] |
| **Effective Date:** | [•] |

This MASTER AGREEMENT (the "Agreement") is entered into as of the Effective Date by and between OpenExchange, Inc., a Delaware corporation with a principal place of business at the address set forth above ("OpenExchange"), and \_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with a principal place of business at the address set forth above (“Customer”), and consists of this cover page, the attached Terms of Service, any and all other documents attached hereto or linked to in the Terms of Service, and all Solution Schedules and Statements of Work entered into by the Parties from time to time during the term of this Agreement, all which are incorporated in full by reference herein. Company and Customer are sometimes collectively referred to herein as the “Parties” and individually as a “Party”. All defined terms used herein shall have the meanings accorded to such terms herein or in Exhibit A (Defined Terms) attached hereto.

Overview; Order of Precedence: This Agreement permits Customer to order OpenExchange products and services, sets forth the terms and conditions between the Parties with respect thereto, and governs Customer’s access and use of the products and services. In the event of any conflict between the provisions in the Terms of Service and any Solution Schedules or Statements of Work, the terms of such Solution Schedules or Statements of Work, as applicable, shall prevail. No terms or conditions stated in a Customer purchase order or in any other Customer provided business forms or order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

Orders by Affiliates: The Parties agree that an Affiliate of Customer may place orders for the OpenExchange products and services by executing a separate Solution Schedule and/or Statement of Work with OpenExchange in which the Customer Affiliate agrees to be bound by all terms and conditions of this Agreement, in which case all references to "Customer" in the Agreement shall mean the Customer Affiliate which executes the Solution Schedule and/or Statement of Work; provided, however, that Customer shall remain responsible for the compliance of its Affiliates with the terms of the Agreement and the Solution Schedules and Statements of Work, including without limitation payment of all fees due thereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, a duly authorized representative of each Party has executed this Agreement as of the Effective Date.

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| --- | --- |
| [•] **(“Customer”)** | **OpenExchange, Inc. (”OpenExchange”)** |
|  |  |
| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: | Name: |
| Title: | Title: |

[OpenExchange terms of Service Follow]

OPENEXCHANGE, INC.

**TERMS OF SERVICE**

1. **OPENEXCHANGE OFFERING**

1.1. OpenExchange Offering.

1.1.1. OpenExchange Platform. Subject to Customer’s compliance with the terms and conditions of the Agreement and the Documentation, OpenExchange hereby grants Customer the right to access and use, and permit its Users to access and use, during the Subscription Term, those components of the OpenExchange Platform subscribed to pursuant to a Solution Schedule on a software as a service basis through a web interface over the Internet as hosted by OpenExchange or its third party hosting and/or service providers. Customer’s entitlements and usage rights and limitations with respect to the OpenExchange Platform shall be as set forth in each Solution Schedule. Customer may access and use the OpenExchange Platform solely for Customer’s and its Affiliates’ Events and not for the benefit of any third party or to provide Events for the benefit of any third party. Customer shall ensure the compliance of its Affiliates with the Agreement and all obligations of Customer hereunder with respect to any use of the OpenExchange Platform by such Affiliates. The method and means of providing the OpenExchange Platform and the Services shall be under the exclusive control, management, and supervision of OpenExchange. OpenExchange is responsible for providing the infrastructure required to provide the OpenExchange Platform over the Internet and OpenExchange may engage third party service providers to host the OpenExchange Platform and provide certain functionality of the OpenExchange Platform on OpenExchange’s behalf. OpenExchange will be responsible for the compliance of such third party service providers with OpenExchange’s obligations to provide the OpenExchange Platform pursuant to this Agreement.

1.1.2. OpenExchange Tools. OpenExchange grants Customer a non-exclusive, non-transferable, worldwide, revocable, nonsublicensable license during the Subscription Term to use any OpenExchange Tools (including without limitation any OpenExchange APIs) made available as part of the OpenExchange Platform for the sole purposes of accessing and using the OpenExchange Platform as permitted hereunder. OpenExchange reserves the right to place limits on access to OpenExchange APIs (e.g., limits on numbers of calls or requests) if OpenExchange believes that Customer’s usage is in breach of the Agreement or may adversely affect the availability, integrity or security of the OpenExchange Platform or otherwise harm OpenExchange, its other customers or the OpenExchange Platform (or otherwise impose liability on OpenExchange).

1.1.3. Use by Contractors and Affiliates. The rights set forth in this Section 1 may be exercised by Customer’s Contractors and Affiliates for the sole benefit of Customer and its Affiliates; provided, that (i) Customer requires such third parties to execute a written agreement with Customer that is at least as protective of the OpenExchange Offering and OpenExchange’s Confidential Information as the Agreement and which does not grant any greater rights than those granted to Customer in Section 1 and includes all restrictions set forth in this Agreement and the applicable Solution Schedule and any SOW and (ii) Customer shall be responsible for any breach of the Agreement by any such third party.

1.1.4. Restrictions. Customer will not (and will not permit any third party to): (a) rent, lease, provide access to, sublicense, transfer or otherwise make available the OpenExchange Offering to a third party or use the OpenExchange Offering to operate of a service bureau or timesharing service, or otherwise for the benefit of a third party; (b) use the OpenExchange Offering to provide, or incorporate the OpenExchange Offering into, any product or service provided to a third party; (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to the OpenExchange Platform or Tools, except to the extent expressly permitted by applicable law (and then only upon advance notice to OpenExchange); (d) adapt, alter, modify, improve, translate or create derivative works of the OpenExchange Platform or Tools; (e) copy or modify the OpenExchange Platform or Tools or any Documentation, or create any derivative work based on any of the foregoing; (f) create Internet "links" to or from the OpenExchange Platform or "frame" or "mirror" any content forming part of the OpenExchange Platform, other than on Customer’s own intranets or otherwise for its own internal business purposes; (g) remove or obscure any copyright, proprietary or other notices contained in the OpenExchange Platform or Tools; (h) use or access the OpenExchange Offering to build or support, and/or assist a third party in building or supporting, products or solutions competitive to the OpenExchange Offering; or (i) publicly disseminate information regarding the performance of the OpenExchange Offering. Customer shall not (i) use the OpenExchange Platform in any manner that could damage, disable, overburden, impair or otherwise interfere with OpenExchange's provision of the OpenExchange Platform; (ii) remove, circumvent, disable or otherwise interfere with security-related features of the OpenExchange Platform, or features that enforce limitations on use of the OpenExchange Platform; (iii) insert or introduce, or knowingly permit or facilitate the insertion or introduction of, any harmful, malicious or disabling code into the OpenExchange Platform; (iv) use the OpenExchange Platform or any other Services to store, display or transmit knowingly infringing, libelous, defamatory, deceptive, fraudulent, obscene, abusive, or otherwise unlawful or tortious material, or to collect, store or transmit material in violation of third-party privacy rights; (v) knowingly interfere with or disrupt the integrity or performance of the OpenExchange Platform, or use the OpenExchange Platform in a way that damages, disables, overburdens or otherwise impacts the normal operation, privacy, integrity or security of the OpenExchange Platform (including its data, websites, networks, facilities, equipment, information, or business operations); or (vi) attempt to gain, or knowingly facilitate any third party’s ability to gain, unauthorized access to the OpenExchange Platform. Customer agrees to notify OpenExchange without undue delay in writing upon reasonable suspicion or actual knowledge of any occurrence of the foregoing. Customer shall be liable for all acts and omissions of its employees and others authorized by Customer to access and use the OpenExchange Platform.

1.1.5. Modifications. OpenExchange reserves the right to modify the OpenExchange Platform from time to time, including without limitation implementing Updates, and OpenExchange will update the applicable Documentation accordingly. If any such modification materially and adversely reduces the functionality of the OpenExchange Platform, Customer’s sole and exclusive remedy shall be for Customer to terminate its subscription to the OpenExchange Platform. OpenExchange may condition the implementation of new features, functionality or other modifications on Customer’s payment of additional fees provided that OpenExchange generally charges other customers for such modifications.

1.1.6 Beta Versions. OpenExchange may, from time to time in its sole discretion, make available Beta Versions. Use of Beta Versions is optional and is at Customer’s sole risk. Notwithstanding anything to the contrary in the Agreement, the warranties, indemnities and other obligations of OpenExchange hereunder shall not apply to Beta Versions, all of which are provided “as is” and “as available”.

1.2. Customer Cooperation, Infrastructure and Access Requirements.

1.2.1. Customer Cooperation. Customer acknowledges that successful provision of the OpenExchange Offering requires reasonable cooperation with OpenExchange. OpenExchange reserves the right to withhold, in all or in part, the OpenExchange Offering if Customer does not cooperate with OpenExchange and provide the necessary information needed to perform the OpenExchange Offering. Further, if performance of the OpenExchange Offering is hindered by lack of cooperation from Customer, Customer shall waive any claims related to such performance. Customer agrees to transmit to OpenExchange all necessary event and meeting details and other requested information in an mutually agreed upon format in writing, in a time frame that allows for optimal execution of the OpenExchange Offering, as further specified in the applicable Solution Schedules and SOWs. If Customer provides less than the minimum notice for provision of the OpenExchange Offering as set forth in a Solution Schedule or SOW, OpenExchange reserves the right, in its sole discretion, (i) to decline offering the OpenExchange Offering for the proposed Event based on lack of capacity and availability of staffing; (ii) and/or charge an additional fee. In addition, Customer waives any claims against OpenExchange that result from technical issues during the Event and such technical issues cannot be used in calculating overall performance of the OpenExchange Offering.

1.2..2 Customer Infrastructure. Other than hardware listed in a Solution Schedule or SOW as provided by OpenExchange, Customer and its Users are responsible for providing and maintaining the hardware, software, infrastructure, and telecommunications and Internet services required to access and use the OpenExchange Offering over the Internet in accordance with the requirements published by OpenExchange from time to time, including in a Solution Schedule or SOW or in the Documentation, including, without limitation, all costs, fees, expenses, and taxes of any kind related to the foregoing. OpenExchange assumes no obligation or liability with respect to Customer’s or its Users’ hardware, software, infrastructure or telecommunications and Internet services, or use thereof, or Customer’s or its Users’ inability to access or use the OpenExchange Platform directly or indirectly caused by such hardware, software, infrastructure or telecommunications and Internet services.

1.2.3. Video Application. In order to use the OpenExchange Platform, Customer calls must terminate at an end point such as a video conferencing console, or a desktop or laptop computer or a tablet device with access to a compatible video application. If not already available on Customer’s device, Customer may be required to license and download a compatible third party video application. Any terms and conditions applicable to such application shall be between Customer and the application provider. If requested by Customer, OpenExchange engineers will evaluate Subscriber’s existing environment to determine compatibility and may recommend a third-party video application. In such event, Customer will be required to accept and comply with the terms of an accompanying third-party end user license agreement with the third party vendor. Customer acknowledges and agrees that OpenExchange has no responsibility or liability for any third party video application or any Customer Data or Customer Content exported to a third party video application. For purposes of this Agreement, the video application is deemed a Third Party Platform as defined herein.

1.3. Access Credentials. Customer will safeguard, and ensure that all Users safeguard their Access Credentials. Customer will be responsible for all acts and omissions of Users. User IDs are granted to individual, named persons and may not be shared. Customer agrees that it will require its Users to keep their Access Credentials secure and confidential and not share their Access Credentials with anyone else. Customer will notify OpenExchange without undue delay if it learns of any unauthorized use of any Access Credentials or any other known or suspected breach of security with respect to the OpenExchange Platform or Access Credentials. Customer shall be solely responsible for ensuring that its Users comply with the terms of this Agreement and the Acceptable Use Policy. Customer will notify OpenExchange without undue delay of any suspected or alleged violation of the terms and conditions of this Agreement or the Acceptable Use Policy and will cooperate with OpenExchange with respect to: (i) investigation by OpenExchange of any suspected or alleged violation of this Agreement or the Acceptable Use Policy, and (ii) enforcement of this Agreement and the Acceptable Use Policy. OpenExchange reserves the right, in its sole discretion and without liability to Customer or its Users, to take any action OpenExchange deems necessary or reasonable to ensure the security of the OpenExchange Platform and Customer’s Access Credentials and account, including terminating Customer’s access or the access of any of Customers’ Users, changing passwords, or requesting additional information to authorize activities related to Customer’s account.

1.4. Third Party Platforms. The OpenExchange Platform may support connections with certain Third-Party Platforms, including without limitation through use of the OpenExchange APIs. In order for the OpenExchange Platform to communicate with such Third-Party Platforms, Customer may be required to input credentials to authorize the OpenExchange Platform to connect to Customer’s account in order to transmit and receive information and data from such Third-Party Platforms as directed or enabled by Customer. Customer is solely responsible for complying with any relevant terms and conditions of the Third-Party Platforms and maintaining appropriate accounts in good standing with the providers of the Third-Party Platforms. Customer acknowledges and agrees that OpenExchange has no responsibility or liability for any Third-Party Platform or any Customer Data or Customer Content exported to a Third-Party Platform or for verifying any Customer Data or Customer Content that Customer imports from a Third-Party Platform.

2. **EVENT MANAGEMENT SERVICES; PROFESSIONAL SERVICES;** **SUPPORT SERVICES**

2.1. Event Management Services. OpenExchange will make available Event Management Services to Customer pursuant to Solution Schedules and Statements of Work executed by the Parties from time to time.

2.2. Professional Services. OpenExchange will make available Professional Services to Customer pursuant to Solution Schedules and Statements of Work executed by the Parties from time to time. Customer shall have the right to use any Deliverables delivered as part of the Professional Services in support of Customer’s authorized use of the OpenExchange Offering, subject to the terms and conditions of the Agreement including without limitation the licenses, rights and restrictions set forth in Section 1 above and in any applicable Solutions Schedule and Statement of Work. The parties acknowledge that OpenExchange does not perform custom development work as part of the Professional Services and that the Deliverables provided by OpenExchange in the performance of the Professional Services may include, among other things, configuration and implementation of the OpenExchange Offering, addition of Customer’s name, logo and other branding to web interfaces, modifications to the OpenExchange Offering, training materials and Documentation. Accordingly, unless otherwise expressly agreed in an SOW, OpenExchange will retain all right, title and interest in and to any such Deliverables, including without limitation all Intellectual Property Rights therein and thereto, excluding any Customer Content, Customer Data and Customer trademarks included therein.

2.3. Support Program. OpenExchange will make available Support Services to Customer pursuant to the OpenExchange Support Program. The Support Services described in the OpenExchange Support Program may be updated from time to time upon reasonable notice to Customer to reflect process improvements or changing practices; provided that any modifications that materially decrease OpenExchange’s Support Services obligations as compared to those reflected in such terms as of the start of Customer’s Subscription Term shall not take effect until renewal of Customer’s Subscription Term.

3. **TERM AND TERMINATION; RENEWALS**

3.1. Term.

3.1.1 Term of Agreement. This Agreement is legally binding as of the Effective Date and shall continue until the earlier of the date all Solution Schedules and SOWs have terminated or the date this Agreement is earlier terminated as provided herein (the “Term”). Upon any termination of this Agreement, all Solution Schedules and SOWs shall immediately terminate without further action of the Parties.

3.1.2 Term of Solution Schedules and SOWs. Each Solution Schedule shall be for the Subscription Term set forth therein and, unless otherwise specified on the applicable Solution Schedule, each Subscription Term will automatically renew for additional twelve-month periods unless either party gives the other written notice of termination at least ninety (90) days prior to expiration of the then-current Subscription Term. Each SOW shall be for the specified term set forth therein and will automatically renew for additional twelve-month periods unless either party gives the other written notice of termination at least ninety (90) days prior to expiration of the then-current Subscription Term.

3.2. Termination for Cause. If either Party materially breaches any of its duties or obligations under these Terms of Service or under any Solution Schedule or SOW and such breach is not cured, or the breaching Party is not diligently pursuing a cure to the non‑breaching Party’s sole satisfaction, within thirty (30) calendar days after written notice of the breach, the non‑breaching Party may immediately terminate the affected Solution Schedule(s) or SOW(s) for cause as of a date specified in such notice. Further, either Party may terminate the Agreement (upon which all outstanding Solution Schedules and SOWs shall concurrently terminate) if the other Party (a) ceases operation without a successor; or (b) seeks protection under any bankruptcy, receivership, trust deed, creditors’ arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter).

3.3. Payments upon Termination. Upon the expiration or termination of this Agreement, or any Solution Schedule or Statement of Work, Customer shall pay to OpenExchange all amounts then due and payable to OpenExchange, if any, and if OpenExchange terminates this Agreement, or any Solution Schedule or Statement of Work, pursuant to Section 3.2, all amounts payable by Customer for the full term of the terminated Solution Schedules and Statements of Work will become immediately due and payable.

3.4. Return of Customer Data. Upon the expiration or termination of this Agreement and payment of any amounts due under Section 3.3 above, OpenExchange shall, within five (5) business days following the termination of this Agreement, return the Customer Data and Customer Content to Customer in OpenExchange’s standard format, and thereafter shall destroy any Customer Data and Customer Content within the possession or control of OpenExchange.

3.5 Effect of Termination. Upon any expiration or termination of this Agreement, Customer will immediately cease any and all use of and access to the OpenExchange Offering (including any and all related OpenExchange Property) and will irretrievably delete (or, at OpenExchange’s request, return) any and all Documentation and Access Credentials and each Party shall irretrievably delete (or, at the other Party’s request, return) the other Party’s Confidential Information in its custody or control and all copies, summaries and extracts thereof. Provided this Agreement was not terminated for Customer’s breach, Customer may retain and use internally copies of all reports exported from the OpenExchange Platform prior to termination. Customer acknowledges that following expiration or termination it will have no further access to any Customer Data or Customer Content processed by OpenExchange through the OpenExchange Platform. Except where an exclusive remedy is specified, the exercise of either Party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise. OpenExchange shall have no liability to Customer or any third party for any termination or expiration of this Agreement.

3.6 Suspension of Service. If Customer’s account is one hundred twenty (120) days or more overdue, in addition to any of its other rights or remedies (including but not limited to any termination rights set forth herein), OpenExchange reserves the right to suspend Customer’s and its Users’ access to the OpenExchange Platform and any Services without liability to Customer until such amounts are paid in full. OpenExchange also reserves the right to suspend Customer’s access to the OpenExchange Platform and any related Services without liability to Customer if (i) Customer’s use of the OpenExchange Platform is in violation of the license or other rights granted under Section 1, is in violation of the AUP or results in or is likely to result in degradation to or disruption of the OpenExchange Platform or harm to OpenExchange or a third party or (ii) a threat to the security or integrity of the OpenExchange Platform exists as determined by OpenExchange in its sole and absolute discretion.

3.7 Survival. The following Sections will survive any expiration or termination of this Agreement: Sections 3, 4, 5.3, 6.1, 6.4, 7, 8, 9, 10 and 11 shall survive any termination or expiration of this Agreement.

4. **FEES; BILLING**

4.1. Fees; Payment. Customer shall be responsible for and shall pay to OpenExchange the Subscription Fees for the access and use of the OpenExchange Platform and Service Fees for the Services, in each case as set forth in each Solution Schedule and Statement of Work. All fees are nonrefundable, except as expressly otherwise set forth in this Agreement, and will be paid in U.S. dollars. Unless otherwise specified in any Solution Schedule or SOW, all invoices issued by OpenExchange will be due and payable within forty-five (45) days of the date of the invoice. The prices and fees in each Solution Schedule and SOW are subject to increase as set forth in the applicable Solution Schedule and SOW. Any estimates provided by OpenExchange for the cost of Professional Services to be performed on a time and materials basis shall be made in good faith but shall in no event be construed as a fixed price agreement between the Parties.

4.2. Late Payment; Disputes. If Customer shall fail to pay the Subscription Fees or Service Fees when due and such failure continues for a period of forty-five (45) days after the due date, then (a) the arrearage(s) shall bear interest from the due date through and including the actual date of payment at the lesser of (i) the rate of one and one-half percent (1.5%) per month (18% per annum), or (ii) the maximum rate allowed by law and pen, (b) OpenExchange may condition future subscription renewals, at its sole discretion, on payment terms shorter than those specified in Section 3.1 (Fees; Payment), and (c) terminate the affected Solution Schedules and SOWs as specified in Section 3.2 (Termination for Cause). In the event of any dispute of an invoice, Customer shall notify OpenExchange in writing within forty-five (45) days of receipt of the invoice of the disputed amount and the reason for the dispute, and the parties agree to negotiate promptly and in good faith a reasonable settlement of the disputed amount. Amounts not disputed within such forty-five (45) day period will be deemed valid and may not later be disputed.

4.3. Billing Procedures. Unless otherwise provided for in a Solution Schedule or SOW, OpenExchange shall bill to Customer the sums due pursuant to the Solution Schedule and SOW by invoices, at the intervals set forth in the Solution Schedule or SOW, as applicable, which invoices shall contain: (a) Customer’s purchase order number, if any, and OpenExchange’s invoice number; (b) description of the OpenExchange Offering for which an amount is due; (c) the fees or portion thereof that are due; (d); Taxes payable by Customer, if any; and, (e) total amount due. At Customer’s request, OpenExchange shall forward invoices in hardcopy format to the Customer’s Accounts Payable address furnished from time to time in writing by Customer. Primary billing contacts for Subscriber are requested in to be included in the applicable Solution Schedule.

4.4. Taxes. In addition to any other amounts payable by Customer hereunder, Customer shall be responsible for and shall pay any and all applicable Taxes, and all Taxes are excluded from any fees set forth in the applicable Solution Schedule or SOW. If Customer is required by applicable Law to withhold any Taxes from Customer’s payment, the fees payable by Customer will be increased as necessary so that after making any required withholdings, OpenExchange receives and retains (free from any liability for payment of Taxes) an amount equal to the amount it would have received had no such withholdings been made. .

5. **REPRESENTATIONS AND WARRANTIES**

5.1 Mutual Warranties. Each of Customer and OpenExchange represent and warrant that: (i) it is a business duly incorporated or formed, validly existing, and in good standing under the laws of its state of incorporation or formation; (ii) it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement; and (iii) the execution, delivery, and performance of this Agreement has been duly authorized by it and this Agreement constitutes the legal, valid, and binding agreement of it.

5.2 Limited Warranty. OpenExchange represents and warrants, for Customer’s benefit only (i) that the OpenExchange Platform will include the functionality set forth in the applicable Documentation and Solution Schedule, and (ii) the Services will be provided in a professional manner using skilled and experienced personnel and in accordance with the requirements of any applicable Solution Schedule or SOW. OpenExchange’s sole liability (and Customer’s sole and exclusive remedy) for any breach of the foregoing warranties will be, at no charge to Customer, for OpenExchange to use commercially reasonable efforts to correct the reported non-conformity in the OpenExchange Offering, or if OpenExchange determines such remedy to be impracticable, either party may terminate the affected Solution Schedule or SOW and Customer will receive as its sole remedy a refund of any fees Customer has pre-paid for the terminated portion of the term of the applicable Solution Schedule or SOW. The limited warranty set forth in this Section will not apply: (i) unless Customer makes a claim within thirty (30) days of the date on which Customer first noticed the non-conformity, (ii) if the nonconformity was caused by misuse or unauthorized modifications of the OpenExchange Offering, Customer’s or its Users’ acts or omissions, or any Customer Content or Customer Data or interoperability of Customer infrastructure, Third Party Platforms, or non-OpenExchange hardware, software or services, or (iii) to Beta Versions.

5.3 Disclaimer. EXCEPT FOR THE LIMITED WARRANTY IN SECTION 5.2, THE OPENEXCHANGE OFFERING IS PROVIDED “AS IS” AND “AS AVAILABLE”. NEITHER OPENEXCHANGE NOR ITS LICENSORS OR SUPPLIERS MAKE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND EXPRESSLY DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. OPENEXCHANGE DOES NOT WARRANT THAT CUSTOMER’S OR ITS USERS’ USE OF THE OPENEXCHANGE OFFERING WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE, NOR DOES OPENEXCHANGE WARRANT THAT THE RESULTS FROM USE OF THE OPENEXCHANGE OFFERING WILL BE ACCURATE OR RELIABLE. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OPENEXCHANGE’S LIABILITY UNDER ANY IMPLIED OR STATUTORY WARRANTY, CONDITION, TERM, REPRESENTATION, UNDERTAKING OR GUARANTY WHICH CANNOT BE LEGALLY EXCLUDED IS LIMITED IN RESPECT OF THE SERVICES TO SUPPLYING THE OPENEXCHANGE OFFERING AGAIN.

6. **CUSTOMER CONTENT AND CUSTOMER DATA**

6.1. Ownership. As between the Parties, Customer will retain all right, title and interest (including any and all Intellectual Property Rights) in and to the Customer Content and Customer Data submitted to the OpenExchange Platform or otherwise provided to OpenExchange in the performance of Services. Subject to the terms of this Agreement, Customer hereby grants to OpenExchange a non-exclusive, worldwide, royalty-free, fully paid up, irrevocable (except on termination of this Agreement) license with right of sublicense to use, execute, host, copy, store, process, transmit, distribute, modify, create derivative works of and display the Customer Content and Customer Data solely to the extent necessary to provide the OpenExchange Offering to Customer and its Users and to allow OpenExchange’s third party contractors and service providers to exercise the licenses granted to OpenExhange in this Section to perform services for or on behalf of OpenExhange the extent necessary to provide the OpenExhange Offering to Customer and its Users.

6.2. Customer Obligations

6.2.1 In General. Customer is solely responsible for the accuracy, content and legality of all Customer Content and Customer Data submitted to the OpenExchange Platform. Customer represents and warrants to OpenExchange that Customer has all necessary rights, consents and permissions to collect, share and use all Customer Content and Customer Data as contemplated in this Agreement (including granting Customer the rights in Section 6.1 above and that no Customer Content or Customer Data will violate or infringe (i) any third party Intellectual Property Rights or any publicity, privacy or other rights, (ii) any Laws, (iii) any terms of service, privacy policies or other agreements governing the Customer’s accounts with any Third-Party Platforms or (iv) the Acceptable Use Policy. Customer will be fully responsible for any Customer Content and Customer Data submitted to OpenExchange by any User as if it was submitted by Customer. Customer will comply with all applicable Laws in its use of the OpenExchange Offering.

6.2.2 No Sensitive Personal Information. Customer acknowledges and agrees that Sensitive Data is not required to be provided to OpenExchange to provide the OpenExchange Offering to Customer or its Users. Customer represents and warrants that it will not, and specifically agrees not to, collect, store, process or transmit any Sensitive Personal Information using the OpenExchange Offering and it will inform Users not to submit Sensitive Information to the OpenExchange Platform. OpenExchange will have no liability under this Agreement for Sensitive Personal Information, notwithstanding anything to the contrary herein.

6.3. Backup and Recovery of Customer Data. As a part of the Services, OpenExchange shall maintain a backup of Customer Content and Customer Data for an orderly and timely recovery of such data in the event that the Services may be interrupted; provided, however, that Suscriber acknowledges and agrees that OpenExchange does not provide an archiving or data backup service for Customer Content and Customer Data and OpenExchange agrees only that it will not intentionally delete any Customer Content and Customer Data from the OpenExchange Platform prior to termination of Customer’s applicable Subscription Term. **OpenExchange expressly disclaims all other obligations and liability with respect to storage and data backup**. Accordingly, Customer shall maintain adequate backups of any Customer Content and Customer Data uploaded by Customer to the OpenExchange Platform.

6.4. Aggregated Anonymous Data. Notwithstanding anything to the contrary herein, Customer agrees that OpenExchange may use Aggregated Anonymous Data to analyze, improve, support and operate the OpenExchange Offering and otherwise for any business purpose during and after the term of the Agreement, including without limitation to generate industry benchmark or best practice guidance, recommendations or similar reports for distribution to and consumption by Customer and other OpenExchange customers. For clarity, Aggregated Anonymous Data will not include Customer Data that has not been anonymized and aggregated with other OpenExchange customer data and does not give OpenExchange the right to identify Customer as the source of any Aggregated Anonymous Data.

6.5. Security and Safeguards. OpenExchange shall maintain appropriate technical and organizational measures which are designed to prevent unauthorized access, use, alteration or disclosure of Customer Data in the possession or under the control of OpenExchange or to which OpenExchange has access which are consistent with industry standards and adequate to meet the requirements of applicable Laws. Each Party shall without undue delay notify the other Party of any unauthorized access to Customer Data of which it becomes aware and shall cooperate to mitigate the effects of the incident. To the extent applicable to Customer’s use of the OpenExchange Platform, the parties will separately execute OpenExchange’s standard form of Data Processing Addendum.

7. **CONFIDENTIAL INFORMATION**

7.1 Confidential Information. For the purposes of this Agreement, the term “Confidential Information” shall mean all information and documentation of a Party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such Party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing Party and marked “confidential” or with words of similar meaning; or, (c) should reasonably be recognized as confidential information of the disclosing Party. The term “Confidential Information” does not include any information or documentation that was: (a) already in the possession of the receiving Party without an obligation of confidentiality; (b) developed independently by the receiving Party, as demonstrated by the receiving Party, without violating the disclosing Party’s proprietary rights; (c) obtained from a source other than the disclosing Party without an obligation of confidentiality; (d) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, or on behalf of, the receiving Party); or (e) otherwise approved in writing by Customer.

7.2 Obligation of Confidentiality. The Parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a Party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement and who are bound by written confidentiality and non-disclosures agreements containing terms in substance identical to the provisions of this Section 7. The Parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.

7.3 Remedies for Breach of Obligation of Confidentiality. Each Party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other Party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a Party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available to such Party.

7.4 Surrender of Confidential Information upon Termination. Upon termination of this Agreement, each Party shall, within five (5) business days from the date of termination, return to the other Party any and all Confidential Information received from the other Party, or created or received by a Party on behalf of the other Party, which are in such Party’s possession, custody, or control. Should either Party determine that the return of any Confidential Information is not feasible, such Party shall destroy such Confidential Information and shall certify the same in writing within five (5) calendar days from the date of termination to the other Party.

8. **OWNERHIP OF OPENEXCHANGE OFFERING**

8.1. OpenExchange Property. Customer acknowledges that it is obtaining only a limited right to use the OpenExchange Offering to the extent expressly granted herein and that irrespective of any use of the word’s “purchase”, “sale” or like terms in this Agreement no ownership rights are being conveyed to Customer under this Agreement. Customer agrees that OpenExchange and its licensors and suppliers own and retain all right, title and interest in and to all OpenExchange Offering and the OpenExchange Technology, including without limitation any and all related and underlying technology and documentation and all modifications, enhancements, improvements, new versions, new releases, corrections and derivative works, and all Intellectual Property Rights in and to all of the foregoing, including as may incorporate Feedback (“OpenExchange Property”), and OpenExchange expressly reserves all rights not expressly granted herein. Further, Customer acknowledges that the OpenExchange Platform as provided by OpenExhange is offered as an on-line, hosted solution, and that Customer has no right to obtain a copy of the object code or source code of the OpenExchange Platform. Except as expressly otherwise set forth herein, no license is granted with respect to OpenExchange’s Intellectual Property Rights.

8.2. Feedback. Customer, from time to time, may submit Feedback to OpenExchange. Customer grants to OpenExchange a worldwide, royalty-free, fully paid, perpetual, irrevocable license to use, reproduce, modify, translate, distribute, perform, display, import, sell, license, offer for sale, make, have made and otherwise exploit the Feedback in any form, media, or technology, whether now known or hereafter developed, and to allow others to do the same without restriction or obligation of any kind, on account of confidential information, Intellectual Property Rights or otherwise, and may incorporate into its products and services any service, product, technology, enhancement, documentation or other development (“Improvement”) incorporating or derived from any Feedback with no obligation to license or to make available the Improvement to Customer or any other person or entity.

9. **INDEMNIFICATION**

9.1.By OpenExchange.

9.1.1 Indemnity. OpenExchange will defend Customer and its Affiliates and their respective employees, officers, and directors from and against any claim by a third party brought against Customer contending that the OpenExchange Platform when used as authorized under this Agreement and in accordance with the applicable Solution Schedules, Statements of Work and Documentation infringes the Intellectual Property Rights of a third party arising under U.S. law and will indemnify and hold harmless Customer from and against any damages and costs finally awarded against Customer or agreed in settlement by OpenExchange (including reasonable attorneys’ fees) resulting from such claim.

9.1.2 Remedy. If Customer’s use of the OpenExchange Platform is (or in OpenExchange’s opinion is likely to be) enjoined, if required by settlement or if OpenExchange determines such actions are reasonably necessary to avoid material liability, OpenExchange may, in its sole discretion require Customer to cease all use of the OpenExchange Platform and either: (a) substitute substantially functionally similar software or services; (b) procure for Customer the right to continue using the affected OpenExchange Platform, as applicable; or if (a) and (b) are not commercially feasible within a commercially reasonable period of time, (c) terminate this Agreement.

9.1.3 Exclusions. The obligations of OpenExchange under this Section 9 will not apply: (1) if the OpenExchange Platform is modified by anyone other than OpenExchange or its authorized contractors, but solely to the extent the alleged infringement is caused by such modification; (2) if the OpenExchange Platform is combined with software, hardware, equipment, devices, services, content, data or other materials not developed by OpenExchange, but solely to the extent the alleged infringement is caused by such combination; (3) to any use of the OpenExchange Platform in violation of this Agreement or not in accordance with the Documentation; (4) to any action arising as a result of Customer Content, Customer Data, Beta Versions, or Third Party Platforms; (5) to the extent the alleged infringement is not caused by the particular technology or implementation of the OpenExchange Platform but instead by features common to any similar product or service; (6) to OpenExchange’s compliance with Customer’s specifications, instructions or designs; (7) if Customer does not use an Update provided by OpenExchange without charge to avoid an infringement; (8) an allegation that does not state with specificity that the OpenExchange Platform is the basis of the claim; (9) if Customer settles or makes any admissions with respect to a claim without OpenExchange prior written consent; or (10) an allegation made against Customer prior to Customer entering into this Agreement or any allegation based upon any action by Customer prior to entering into this Agreement.

9.1.4 Sole Remedy. THIS SECTION 9 SETS FORTH OPENEXCHANGE’S AND ITS LICENSORS’. AND SUPPLIERS’ SOLE LIABILITY AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

9.2. By Customer. Customer shall defend, indemnify and hold OpenExchange and its Affiliates and their respective employees, officers, and directors harmless from and against any losses, damages, costs, expenses, settlements, fines, penalties and any and all other liabilities (including reasonable attorneys’ fees) arising out of or in connection with third party claims, suits, proceedings, demands, or actions arising out of or related to (i) Customer’s or any User’s use of the OpenExchange Offering not in accordance with the terms of this Agreement, the Solution Schedules, SOWs or the Documentation; (ii) the Customer Content or Customer Data, including without limitation any claim that any of the foregoing, in whole or in part, infringe, violate or misappropriate the Intellectual Property Rights of, or has otherwise harmed, a third party; (iii) Customer’s or is Users’ use of the Services in a manner that harasses, defames, libels or defrauds a third party or violates any applicable Law; (iv) any loss of or damage to real or tangible property or financial assets, caused by the act or omission of Customer or any of its agents, subcontractors, or employees; or (v) claims by Customer’s Users, employees, personnel working on behalf of Customer, investors, and/or customers.

9.3. Indemnification Process. The foregoing obligations are conditioned on the indemnified party: (a) notifying the indemnifying party promptly in writing of such action, provided, that any failure to promptly notify the indemnifying party shall not relive the indemnifying party of its obligations except to the extent it was unduly prejudiced; (b) giving the indemnifying party sole control of the defense thereof and any related settlement negotiations, provided that any settlement shall fully release the indemnified party from liability and shall not impose any obligations or restrictions on the indemnified party without the indemnified party’s consent; and (c) cooperating and, at the indemnifying party’s written request and expense, assisting in such defense. The indemnifying party will not reimburse the indemnified party for any expenses incurred by the indemnified party without the prior written approval of the indemnifying party. The indemnified party will have the right to participate in the defense and settlement of a claim at the indemnified party’s expense.

10. **LIMITATION OF LIABILITY**

10.1. Disclaimer of Consequential Damages. SUBJECT TO SECTION 10.3 BELOW, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE, AND/OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; INCLUDING WITHOUT LIMITATION LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF BUSINESS, LOSS OF GOODWILL, LOSS OF DAMAGE TO, OR CORRUPTION OF, DATA, FAILURE OF SECURITY MECHANISMS, LOSS OF USE, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED, WHETHER ARISING UNDER STATUTE, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR WHETHER SUCH DAMAGE WAS FORESEEABLE OR IN THE CONTEMPLATION OF THE PARTIES.

10.2. Limitation on Direct Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABL LAW, EACH PARTY’S TOTAL AGGREGATE LIABILITY TO THE OTHER PARTY FOR ALL CLAIMS UNDER THIS AGREEMENT, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT, OR OTHERWISE SHALL NOT EXCEED THE FEES PAID BY CUSTOMER TO OPENEXCHANGE UNDER THE SOLUTION SCHEDULE OR STATEMENT OF WORK UNDER WHICH THE CLAIM AROSE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. THE FOREGOING LIMITATIONS ARE CUMULATIVE AND NOT PER INCIDENT AND SHALL APPLY EVEN IF THE NON-BREACHING PARTY’S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

10.3. Exclusions. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO: (A) A PARTY’S OBLIGATIONS OF INDEMNIFICATION SET FORTH IN SECTION 9; (B) DAMAGES CAUSED BY A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (C) CUSTOMER’S OBLIGATION TO MAKE PAYMENT OF UNDISPUTED FEES; (D) A PARTY’S VIOLATION OR MISAPPROPRIATION OF THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS; OR (D) CUSTOMER’S BREACH OF THE ACCESS RIGHTS OR RESTRICTIONS APPLICABLE TO THE OPENEXCHANGE OFFERING.

10.4.  Nature of Claims and Failure of Essential Purpose. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON DURATION OR THE EXCLUSION OF AN IMPLIED WARRANTY, SO THE LIMITATIONS HEREIN MAY NOT APPLY. Neither party shall be responsible or liable for any loss, damage or inconvenience suffered by the other or by any third person, to the extent that such loss, damage or inconvenience is caused by the failure of the other party to comply with its obligations under this Agreement. The parties agree that the waivers and limitations specified in this apply regardless of the form of action, whether in contact, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in the Agreement is found to have failed of its essential purpose.

10.5. Limitation of Action. To the maximum extent permitted by applicable law and except for actions by OpenExchange against Customer for non-payment of, for Customer’s breach of the rights granted herein or the restrictions applicable hereto or Customer’s misappropriation or violation of OpenExchange’s Intellectual Property Rights, no action (regardless of form) arising out of this Agreement may be commenced by either party more than one (1) year after the date the cause of action accrued.

10.5. Allocation of Risk. Each Party acknowledges that the fees payable by Customer to OpenExchange reflect the allocation of risk between the parties and that the other Party would not enter into this Agreement without the limitations on its liability set forth in this Section 10.

11. **GENERAL**

11.1. Relationship between Parties. Each Party represents and warrants that it is an independent contractor with no authority to contract for the other Party or in any way to bind or to commit the other Party to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of the other Party. Under no circumstances shall either Party, or any of its employees, consultants and agents, hold itself out as or be considered an agent employee, joint venturer,or partner of the other Party.

11.2. Governing Law; Jurisdiction; Jury Trial Waiver. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard for principles of conflicts of laws. The Parties expressly disclaim the applicability of the United Nations Convention on Contracts for the International Sale of Goods does and the Uniform Computer Information Transactions Act. Each Party hereby irrevocably consents and submits to the exclusive jurisdiction and forum of the state and federal courts in the Commonwealth of Massachusetts in all questions and controversies arising out of this Agreement. **The Parties irrevocably waive any right to a trial by jury.** The English language version of this Agreement shall govern in lieu of any translation.

11.3. Force Majeure. Except for the obligation to make payments, neither Party will incur any liability to the other Party on account of any loss or damage resulting from any delay or failure to perform all or any part of the Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the Parties; provided, that the Party whose performance is affected by the event of force majeure uses reasonable efforts, under the circumstances, to notify the other Party of the cause of such delay and to resume performance as soon as commercially practicable. Such events, occurrences or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of government, acts of war, terrorism, earthquakes, fires, floods, natural disasters, epidemics, pandemics, fire, explosions, failure of internet service providers, failure of utility or telecommunications providers, failure denial of service attacks, failure of suppliers or service providers.

11.4. Publicity. OpenExchange shall have the right to (i) list Customer's logo as a OpenExchange customer on OpenExchange's website and in OpenExchange's marketing materials, and (ii) issue a press release and other promotional material announcing that Customer has become a customer of OpenExchange; provided, however, that the wording of any such press release or announcement or use shall be approved in advance by Customer, which approval shall not be unreasonably withheld. Except as specifically set forth above, nothing in this Agreement shall authorize either Party to use the other Party’s trademarks, copyrights or other intellectual property in connection with any marketing or for any other purposes.

11.5. No Waiver. The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall in no way affect that party’s right to enforce such provisions, nor shall the waiver by either Party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.

# 11.6. Notices. Any notice or communication required or permitted under this Agreement will be in writing to the Parties at the addresses set forth on the Solution Schedule or at such other address as may be given in writing by either Party to the other in accordance with this Section and will be deemed to have been received by the addressee (i) if given by hand, immediately upon receipt; (ii) if given by overnight courier service, the first business day following dispatch or (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail. In addition, Customer acknowledges and agrees that OpenExchange may provide notices to Customer via email to Customer’s email account on file with OpenExchange or through the OpenExchange Platform and such notices will be deemed given when sent.

11.7. Assignment. Neither Party will assign this Agreement, or delegate its obligations or assign its rights hereunder, without obtaining the prior written consent of the other Party, and any attempted assignment in violation of the foregoing will be null and void. For the avoidance of doubt, a change of control, merger or other consolidation, acquisition or reorganization of Customer shall be deemed an assignment hereunder and is not permitted without OpenExchange’s prior written consent, which may be withheld or conditioned in OpenExchange’s sole and absolute discretion. Notwithstanding the foregoing without Customer’s prior consent, OpenExchange may assign this Agreement in connection with a merger, acquisition, reorganization or change of control of OpenExchange, including without limitation a sale of all or substantially all of its assets, voting securities or business to which this Agreement relates. Subject to the foregoing, the terms of this Agreement will be binding upon the Parties and their respective successors and permitted assigns.

11.8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The Parties agree that a facsimile signature or electronic transmission of a portable document format or other image file may substitute for and have the same legal effect as the original signature.

11.9. Entire Agreement; Amendment. This Agreement and any attachments hereto together with all linked documents incorporated herein and all Solution Schedules and Statements of Work entered into between the Parties constitute the entire agreement between the Parties and supersede any and all previous and contemporaneous representations, understandings, proposals, representations and agreements between Customer and OpenExchange, whether written or oral, as to the subject matter hereof. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to entering into the Agreement, except as expressly stated in these Terms of Service. Neither Party shall have any remedy in respect of any untrue statement made by the other upon which that Party relied in entering into the Agreement (unless such untrue statement was made fraudulently) and that Party’s only remedy in respect of any untrue statement shall be for breach of contract as provided in these Terms of Service. Customer acknowledges and agrees that its agreement is not contingent upon the delivery of any future functionality or features not specified herein or in an Order Form or dependent upon any oral or written, public or private comments made by OpenExchange with respect to future functionality or features for the OpenExchange Offering. This Agreement may only be supplemented, modified or amended by an instrument in writing signed by the Parties. This Agreement shall be construed without regard to the Party that drafted it. Any ambiguity shall not be interpreted against either Party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.

11.10. No Third Party Beneficiaries. The Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the Parties to the Agreement may enforce it.

11.11. Subcontractors. OpenExchange may use the services of its Affiliates and its and its Affiliates’ third party subcontractors and service providers and shall have the right to permit them to exercise the rights granted to OpenExchange hereunder in order to perform OpenExchange’s obligations and exercise OpenExchange’s rights under this Agreement, provided that OpenExchange remains responsible for (i) compliance of any such third parties with the terms of this Agreement and (ii) for the overall performance of this Agreement.

11.12. Export Control; Anti-Corruption. In its use of the OpenExchange Offering, Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a “terrorist supporting” country, (ii) Customer will not (and will not permit any of its Users to) access or use the OpenExchange Offering in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer will not submit to OpenExchange or the OpenExchange Platform any information that is controlled under the U.S. International Traffic in Arms Regulations. Both Parties agree to fully comply with the provisions of the United States Foreign Corrupt Practices Act (“FCPA”) and/or the Organization for Economic Cooperation and Development (“OECD”) prohibiting foreign bribery and improper payments. Without limiting the generality of the foregoing, each party represents and warrants that it has not and shall not at any time during the Term pay, give, or offer or promise to pay or give, any money or any other thing of value, directly or indirectly, to or for the benefit of: (i) any government official, political party, or candidate for political office; or (ii) any other person, firm, corporation or other entity, with knowledge that some or all of that money or other thing of value will be paid, given, offered or promised to a government official, political party or candidate for political office, for the purpose of obtaining or retaining any business, or to obtain any other unfair advantage, in connection with this Agreement.

# 11.13. Section Headings; Construction. The Section headings contained herein are for convenience of reference only and shall not be considered as substantive parts of this Agreement. Unless the context of this Agreement clearly requires otherwise: (i) references to the plural include the singular, the singular the plural, and the part the whole, (ii) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (iii) “including” has the inclusive meaning frequently identified with the phrase “including but not limited to” or “including without limitation,” and (iv) references to “hereunder,” “herein” or “hereof” relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time.

**Exhibit A**

**Defined Terms**

“**Acceptable Use Policy**” or “**AUP**” means OpenExchange’s Acceptable Use Policy which applies to the use of the OpenExchange Platform and is set forth at [www.openexchange.com](http://www.openexchange.com) as the same may be updated from time to time.

“**Access Credentials**” mean login information, API keys, passwords, security protocols, and policies through which Users access and use the OpenExchange Platform.

“**Admin User**” means Customer’s employees and consultants that Customer authorizes to access and use the OpenExchange Platform and OpenExchange Tools and which are bound by written terms at least as protective of OpenExchange as those in this Agreement.

“**Affiliate**” means all companies and subsidiaries that directly or indirectly control or are controlled by a party to this Agreement or are under common control with such party. As used in this Agreement, control means equity ownership of fifty percent (50%) or greater interest in the voting shares held by an entity.

**“Aggregated Anonymous Data”** means any information, metadata, machine learning, or other data derived from Customer Data and/or Customer’s and its Users’ use of the OpenExchange Platform that is not specific to a person, does not include personally identifiable information, and cannot be used, alone or in conjunction with other information, to identify any specific person.

**“Beta Versions”** meansversions of new functionality for the OpenExchange Offering that are not generally commercially available and which OpenExchange may pre-release to all or some of its customers for which customers are expected to report any bugs they encounter or any changes such customers would like to see before the general release.

“**Customer Content**” means any and all content, text, videos, photographs, music, trademarks, and any other works of authorship submitted by Customer or its Users to the OpenExchange Platform or created by Customer or its Users using the OpenExchange Platform.

“**Customer Data**” means any data of any type that is submitted to the OpenExchange Platform by or on behalf of Customer or its Users, including without limitation Personal Data and any data imported from Third Party Platforms.

“**Deliverables**” means any and all technology, work product, software code and other deliverables delivered pursuant to an SOW, including without limitation any and all derivatives, enhancements and modifications thereof.

“**Data Processing Agreement**” means OpenExchange’s Data Processing Agreement set forth at [www.openexchange.com](http://www.openexchange.com).

“**Documentation**” means the technical user documentation for the OpenExchange Offering, whether in print or electronic form, provided by OpenExchange, as the same may be updated by OpenExchange from time to time to reflect Updates.

“**Event**” means a virtual conference, meeting, event or other collaboration hosted by a Customer using the OpenExchange Offering, including through any use of OpenExchange’s Event Management Services.

“**Event Attendees**” means attendees of Events hosted by Customer using the OpenExchange Offering.

“**Event** **Management Services**” means the management of Customer’s Event, including any on-site services and equipment rental services, provided by OpenExchange to Customer pursuant to Solution Schedules and/or Statements of Work.

“**Feedback**” means ideas, thoughts, criticisms, suggestions, enhancement requests, techniques, know-how, methodologies, comments, feedback or other input provided by Customer or its Users relating to the OpenExchange Offering, including in response to any product plans or roadmaps shared by OpenExchange with Customer.

**“Intellectual Property Rights”** mean any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) registrations, applications, renewals, extensions, or reissues of the foregoing, in each case, in any jurisdiction throughout the world.

“**Laws**” means all applicable local, state, federal and international laws, regulations and conventions, including, without limitation, those related to data privacy and data transfer, international communications, and the exportation of technical or personal data.

“**Personal Data**” shall have the meaning accorded to such term in the Data Protection Agreement.

“**Professional Services**” means those services provided by OpenExchange to Customer pursuant to Solution Schedules and/or Statements of Work.

“**Sensitive Personal Information**” means any of the following: (i) financial account information or credit, debit or other payment card data subject to the Payment Card Industry Data Security Standards (“**PCI DSS**“); (ii) patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act (“**HIPAA**“); (iii) social security numbers, passport numbers or other government issued id numbers, date of birth and/or gender; (iv) any other personal data of an EU citizen deemed to be in a “special category” (as identified in EU General Data Protection Regulation or any successor directive or regulation); (v) would require notification to government agencies, individuals or law enforcement if subject to unauthorized access, use or disclosure; (vi) reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, sex orientation or activities, or genetic or biometric data; or (vii) other information which a reasonable person would recognize as being highly sensitive (but excluding, for avoidance of doubt, contact information such as name, mailing address, IP address, email address, and phone number).

“**Services**” means Event Management Services, Professional Services and Event Management Services.

“**Service Level Agreement**” means the service level agreement applicable to the OpenExchange Platform or Service as set forth at [www.openexchange.com](http://www.openexchange.com).

“**Solution Schedule**” means OpenExchange’s standard solution schedule, whether in electronic or printed form, entered into by an authorized representative of each Party which sets forth the components of the OpenExhange Offering ordered by Customer and which sets forth and defines Customer’s usage entitlements and limitations and any applicable pricing metrics and fees.

“**Statement of Work**” or “**SOW**” means a written Statement of Work referencing this Agreement and executed by both Parties describing the Event Management Services or Professional Services, as applicable, to be performed, fees and any applicable milestones, dependencies and other technical specifications or related information.

“**Subscription Term**” means the period of time set forth in a Solution Schedule during which Customer has the right to access and use the components of the OpenExchange Offering ordered by Customer pursuant to such Solution Schedule.

“**Support Services**” means the applicable technical support and maintenance services for the OpenExchange Offering made available by OpenExchange to Customer pursuant to the OpenExchange Support Program.

“**Taxes**” means any sales, use, GST, value-added, withholding, or similar taxes, customs, and any customs duties, charges, fees or levies, whether domestic or foreign, excluding taxes based on the income, employees or property of OpenExchange.

“**Third Party Platform**” means any software, software-as-a-service platforms, telecommunications platforms, data sources or other products or services not provided by OpenExchange that are able to be connected to the OpenExchange Platform using the OpenExchange APIs in accordance with the Documentation.

“**OpenExchange APIs**”means OpenExchange’s proprietary application programming interfaces that enable the connection of Third Party Platforms with the OpenExchange Platform.

“**OpenExchange Offering**” means the OpenExchange Platform, OpenExchange Tools, and the Services.

“**OpenExchange Platform**” means OpenExchange’s proprietary video conferencing platform referred to as OpenExchange VIZION, including without limitation OE Central, OE Passport, and Knovio, and all applications, features and functionality thereof subscribed to by Customer pursuant to a Solution Schedule. “**OE Central**” means the module included with OpenExchange VIZION that enables Admin Users to plan, manage, monitor and record Events and view and create analytics with respect to Events. “**OE Passport**” means the module included with OpenExchange VIZION that Event Attendees access and use to view and participate in Events. “**Knovio**” means the module included with OpenExchange VIZION that enables Admin Users to create and publish Content using Knovio embed codes over the OpenExchange Platform.

“**OpenExchange Support Program**” means the OpenExchange support program set forth at [www.openexchange.com](http://www.openexchange.com) which sets forth the Support Services provided by OpenExchange for the OpenExchange Offering.

“**OpenExchange Technology**” means (i) the computer software, computer code, scripts, application programming interfaces, methodologies, templates, tools, algorithms, user interfaces, know-how, trade secrets, techniques, designs, inventions, third party services and other tangible or intangible technical material, information and works of authorship underlying or otherwise used to make available the OpenExchange Platform and to provide any Professional Services, and (ii) OpenExchange Tools; including, without limitation, all Intellectual Property Rights therein and thereto.

“**OpenExchange Tools**” means OpenExchange APIs and any other code, scripts and tools provided by OpenExchange to Customer in connection with the OpenExchange Offering, including without limitation Knovio embed code.

**“Updates”** mean all upgrades, enhancements, improvements, maintenance releases, additions, and modifications, of the OpenExchange Platform and OpenExchange Toolsmade generally commercially available by OpenExchange pursuant to the OpenExchange Support Program during the applicable Subscription Term.

“**User(s)**” means all Admin User(s) and Event Attendee(s).