

SAAS SERVICES AGREEMENT

THIS SAAS SERVICES AGREEMENT (THIS "Agreement") IS MADE BY AND BETWEEN IFOODDECISIONSCIENCES, INC., A WASHINGTON CORPORATION ("Provider"), AND THE PARTY IDENTIFIED AS CUSTOMER ON THE ORDER FORM REFERENCING THIS AGREEMENT ("Customer"). THIS AGREEMENT IS A BINDING AND ENFORCEABLE AGREEMENT BETWEEN THE PARTIES. CUSTOMER'S USE OF THE SERVICES (DEFINED BELOW) CONSTITUTES CUSTOMER'S ACCEPTANCE OF THESE TERMS. SIGNING OR CLICKING A BOX INDICATING ACCEPTANCE INDICATES THAT THE PERSON SIGNING, CLICKING OR ACCEPTING ON BEHALF OF CUSTOMER HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT AND THAT CUSTOMER HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. THIS AGREEMENT IS EFFECTIVE AS OF THE DATE OF SUCH ACCEPTANCE OR EXECUTION ("Effective Date").

This Agreement permits Customer to purchase and use the Services from Provider pursuant to Provider order forms, quotations, change orders, sales agreements, or any other documents referencing this Agreement (each an "Order Form") and sets forth the basic terms and conditions under which those products and services will be made available to Customer. This Agreement shall govern Customer's initial purchase on the Effective Date as well as any future purchases made by Customer that reference this Agreement.

TERMS AND CONDITIONS

DEFINITIONS

"**Access Credentials**" means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Services.

"**Access Rights**" means the grant of third party access to Customer Data by Customer through execution of a signed Third Party Access Authorization.

"**Affiliate**" means any entity that, directly, or indirectly through one or more intermediaries, is under the control of Customer, controls Customer, or is under common control with Customer, where "control" means ownership of or the right to control greater than 50% of the voting securities of such entity.

"**Authorized User**" means each of the individuals authorized to use the Services pursuant to Section 1 and the other terms and conditions of this Agreement.

"**Customer Data**" means, other than Resultant Data, information, data and other content, in any form or medium, that (a) is collected, downloaded or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Services or that incorporates or (b) is derived from the Processing of such information, data or content by or through the Services. For the avoidance of doubt, Customer Data includes information reflecting the access or use of the Services by or on behalf of Customer or any Authorized User other than Resultant Data.

"**Customer Systems**" means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.

"**Equipment**" means products needed to connect to, access or otherwise use the Services, including modems, hardware, servers, software, operating systems, networking, web servers and the like.

"**Initial Term**" means the period commencing on the Effective Date and expiring on the first anniversary of the Effective Date.

"**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

"**Losses**" means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"Permitted Use" means any use of the Services by an Authorized User for the benefit of Customer solely in or for Customer's internal business operations and in accordance with this Agreement.

"Person" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

"Process" means to take any action or perform any operation or set of operations that the Services are capable of taking or performing on any data, information or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or block, erase or destroy. **"Processing"** and **"Processed"** have correlative meanings.

"Products" means any and all products described in an Order Form.

"Provider Materials" means the Service Software, Specifications, and Provider Systems and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Provider or any Subcontractor (as defined in Section 9.11) in connection with the Services or otherwise comprise or relate to the Services or Provider Systems. For the avoidance of doubt, Provider Materials include Resultant Data but do not include Customer Data or marketing materials.

"Provider Systems" means the information technology infrastructure used by or on behalf of Provider in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Provider or through the use of third-party services.

"Representatives" means, with respect to a party, that party's and its Affiliates' employees, officers, consultants, agents, and independent contractors. As used herein, Representatives shall also include Provider's Data Advisory Board.

"Resultant Data" means information, data and other content that is derived by or through the Services from Processing Customer Data and is sufficiently different from such Customer Data that such Customer Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further Processing of such information, data or content. Resultant Data includes data to the extent it has been aggregated with other customers' data which aggregated data shall be owned

by Provider and may be made available by Provider to third parties and/or used by Provider for benchmarking and analysis.

"Scheduled Downtime" means periodic downtime for the routine maintenance of Provider Systems.

"Service Software" means the Provider software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Provider provides remote access to and use of as part of the Services.

"Services" means the services and the Products as defined in an Order Form.

"Specifications" means the specifications for the Services set forth in any Order Form, as may be amended by the parties from time to time.

"Support and Training" means the obligations of Provider to support Customer in their use of the Services, as defined in any Order Form.

"Third Party Access Authorization" means the agreement between Provider and Customer authorizing Provider to grant third party access to Customer Data.

"Third Party Materials" means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Provider.

1. SAAS SERVICES AND SUPPORT

1.1 Subject to and conditioned on Customer's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, Provider hereby authorizes Customer to access and use, solely during the Term, the Services and such Provider Materials as Provider may supply or make available to Customer solely for the Permitted Use by and through Authorized Users in accordance with the Specifications and the conditions and limitations set forth in this Agreement. This authorization is non-exclusive and, other than as may be expressly set forth in Section 9.2, non-transferable. Customer may make reasonable requests for the addition of Authorized Users through written request submitted to Provider's Service Manager. Provider shall authorize the requested Authorized Users within a reasonable period of time after written notice is received. Provider may refuse access to the Services and Provider Materials to independent contractors and consultants of Customer that are competitors of Provider. Customer remains responsible for compliance by each Authorized User with all of the terms and conditions of this Agreement and any such use of the Services by such Authorized

User is for the sole benefit of Customer.

1.2 Nothing in this Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Provider Materials or Third Party Materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services, the Provider Materials and the Third Party Materials are and will remain with Provider and the respective rights holders in the Third Party Materials.

1.3 Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, during the Term, Provider shall use commercially reasonable efforts to provide to Customer and its Authorized Users the Services in accordance with the Specifications and terms and conditions hereof, including to host, manage, operate and maintain the Service Software for remote electronic access and use by Customer and its Authorized Users in substantial conformity with the Service Level Terms attached hereto as Exhibit A.

1.4 Each party shall, throughout the Term, maintain within its organization a service manager to serve as such party's primary point of contact for day-to-day communications, consultation and decision-making regarding the Services. Each service manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under this Agreement. Each party shall ensure its service manager has the requisite organizational authority, skill, experience and other qualifications to perform in such capacity. The parties' initial service managers are identified above.

1.5 Provider shall at all times comply with the data backup and security policies set forth in the Service Level Terms, attached hereto as Exhibit A.

1.6 Subject to and conditioned on Customer's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement and any Order Form, Provider agrees to provide Support and Training services as provided in any Order Form.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer shall not, and shall not permit, any other Person to, access or use the Services or Provider Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits: (a) copy, modify or create derivative works or improvements of the Services or Provider Materials; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or Provider Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service; (c) reverse engineer, disassemble,

decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or Provider Materials, in whole or in part; (d) bypass or breach any security device or protection used by the Services or Provider Materials or access or use the Services or Provider Materials other than by an Authorized User through the use of his or her own then valid Access Credentials; (e) access or use the Services or Provider Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other Provider customer), or that violates any applicable Law; (f) access or use the Services or Provider Materials for purposes of competitive analysis of the Services or Provider Materials, the development, provision or use of a competing software service or product or any other purpose that is to the Provider's detriment or commercial disadvantage; or (g) otherwise access or use the Services or Provider Materials beyond the scope of the authorization granted under Section 1.

2.2 Customer represents, covenants, and warrants that (a) Customer will use the Services only in compliance with the Terms and Conditions and all applicable laws and regulations (b) Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Provider and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law; (c) Customer is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation; and (d) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party. Although Provider has no obligation to monitor Customer's use of the Services, Provider may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

2.3 Customer shall be responsible for obtaining and maintaining any Equipment and ancillary services needed to connect to, access or otherwise use the Services. Customer acknowledges that Internet service coverage, bandwidth and speed may affect the performance of the Services and are beyond the control of the Provider. Access to the Toolbox requires an Internet compatible device such as a PC or tablet computer. Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent. Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement. If Customer becomes aware of any actual or threatened activity prohibited by this Section 2, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control

that are necessary to stop the activity or threatened activity and to mitigate its effects; and (b) notify Provider of any such actual or threatened activity.

2.4 Customer shall promptly and in good faith cooperate with Provider in connection with Provider's implementation and provisioning of the Services. Such cooperation shall include the provision of information and documentation reasonably requested by Provider within fourteen (14) days of Provider's request and meeting with Provider's Representatives to review and accept the Services.

3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business, including Provider Materials, the terms and conditions of this Agreement and any Order Form, and Customer Data (hereinafter collectively referred to as "Confidential Information" of the Disclosing Party). The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information, and (ii) not to use (except in performance of the Services) or, subject to Section 3.4, divulge to any third person any such Confidential Information. The Receiving Party agrees to promptly notify the Disclosing Party of any request for Confidential Information made by a third party. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document: (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Confidential Information of the Disclosing Party or (e) is required to be disclosed by law, so long as the Receiving Party (i) notifies the Disclosing Party of such requirement prior to disclosure; and (ii) provides reasonable assistance to the Disclosing Party, at the Disclosing Party's cost, in obtaining or opposing a protective order. Should the Receiving Party remain required by law to disclose such Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose.

3.2 As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall: (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (b) except as may be permitted by and subject to its compliance with Section 3.1, Section 3.4 and Section 3.5, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii)

have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 3; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 3; (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and (d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section. In the event Confidential Information is disclosed in violation of this Section 3, the Receiving Party shall promptly notify the Disclosing Party of such disclosure.

3.3 Subject to Section 3.4, Customer shall own all right, title and interest in and to the Customer Data. Provider shall own and retain all right, title and interest in and to (a) the Services and Service Software, all improvements, enhancements or modifications thereto; (b) any software, applications, inventions or other technology developed in connection with implementation services or support; and (c) all intellectual property rights related to any of the foregoing.

3.4 Notwithstanding anything to the contrary, Provider shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including information concerning Customer Data and Resultant Data), and Provider will be free (during and after the term hereof) to: (a) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Provider offerings; and (b) disclose such data solely in aggregate or other de-identified form in connection with its business. Provider shall own all right, title and interest in and to the Resultant Data and Customer hereby assigns any right, title and interest therein to Provider without fees or rights to future royalties.

3.5 Subject to this Section 3, Customer shall have the right to grant Access Rights to Customer Data in any third party. Any grant of Access Rights shall be made for each third party granted such Access Rights pursuant to a signed Third Party Access Authorization. Subject to the terms and conditions of this Agreement, in the absence of a signed Third Party Access Authorization, no third party shall be granted Access Rights to Customer Data. Customer acknowledges that execution of a Third Party Access Authorization permits Provider to grant such third party access to Customer Data as contained in the Third Party Access Authorization during the term specified therein. Provider shall not be liable to Customer or any third party for the actions taken by third parties granted access to Customer Data by Customer.

3.6 Notwithstanding anything to the contrary, Customer grants to Provider a limited, non-exclusive, non-sublicensable, royalty-free license during the Term to Customer's logos, trademarks,

trade name, service marks and domain name (collectively, the “Marks”) to: (a) display such Marks on Provider’s website and on Provider’s marketing materials; and (b) advertise, market and promote Provider’s Services through use of those mediums described in (a) above. Provider’s rights under this Section 3.6 shall be subject to Provider’s use of Customer’s Marks in a commercially reasonable manner.

4. PAYMENT OF FEES

4.1 Customer shall pay Provider the fees specified in each Order Form (“Fees”) in accordance with this Section 4. Customer shall pay any “Initial” or “One Time” Fees and annual Fees on or before the Effective Date using the credit card on file and will be automatically billed and pay, using the credit card on file, any annual renewal fees on or before the renewal date.. All out-of-pocket expenses incurred by Provider at Customers request in connection with performing the Services (such as travel for on-site training) (the “Reimbursable Expenses”) shall be payable upon receipt of an invoice for the same from Provider. Provider reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Term or then-current renewal term, upon sixty (60) days’ prior notice to Customer (which may be sent by email).

4.2 Customer shall make payments to the address or account specified by Provider from time to time. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Provider’s net income.

4.3 In the event Customer terminates the Services or elects not to renew the Services pursuant to this Agreement and desires Provider to transfer files containing Customer Data to Customer, Customer will pay Provider at is then-current hourly rate for such services.

5. TERM AND TERMINATION

5.1 Subject to earlier termination as provided below, this Agreement is for the Initial Term as specified in the Order Form, and shall be automatically renewed for additional periods of twelve (12) months each (collectively, the “Term”), unless either party requests termination or terminates automatic billing at least sixty (60) days prior to the end of the then-current term. If Customer terminates as provided in this paragraph, the Services will remain active during the current term and Fees paid for such term will not be refunded.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days’ notice (or immediately without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement and such material breach is incapable of cure or, being capable of cure, remains uncured thirty (30) days after the

non-breaching party provides written Notice of such breach. Provider may terminate this Agreement if Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities. Customer will pay in full for the Services up to and including the last day on which the Services are provided.

5.3 Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement: (a) all rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate, and Provider may disable all Customer and Authorized User access to the Services and Provider Materials, (b) Provider shall immediately cease all use of any Customer Data or Customer’s Confidential Information and (i) within thirty (30) days return to Customer, or at Customer’s written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on Customer Data or Customer’s Confidential Information; and (ii) permanently erase all Customer Data and Customer’s Confidential Information from all systems Provider directly or indirectly controls, provided that, for clarity, Provider’s obligations under this Section 5.3 do not apply to any Resultant Data; (c) Customer shall immediately cease all use of any Services or Provider Materials and (i) within thirty (30) days return to Provider, or at Provider’s written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on any Provider Materials or Provider’s Confidential Information; and (ii) permanently erase all Provider Materials and Provider’s Confidential Information from all systems Customer directly or indirectly controls; (d) notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control: (i) the Receiving Party may retain the Disclosing Party’s Confidential Information; and (ii) Provider may retain Customer Data; in the case of each of subclause (i), and (ii) in its then current state and solely to the extent and for so long as required by applicable Law; (iii) Provider may also retain Customer Data in its backups, archives and disaster recovery systems until such Customer Data is deleted in the ordinary course; and (iv) all information and materials described in this Section 5.3 will remain subject to all confidentiality, security and other applicable requirements of this Agreement; (e) if Customer terminates this Agreement pursuant to Section 5.2, Customer will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination and Provider will: (i) refund to Customer Fees paid in advance for Services that Provider has not performed as of the effective date of termination; and (ii) pay to Customer any unpaid Service Credits to which Customer is entitled; and (f) if Provider terminates this Agreement pursuant to Section 5.2, all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees and Reimbursable Expenses, on receipt of Provider’s invoice therefor.

5.4 The provisions set forth in the following Sections, and any other right or obligation of the parties in this Agreement that, by

its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 2, Section 3, Section 5, Section 7, Section 8 and Section 9.

6. WARRANTY AND DISCLAIMER

Provider shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Provider or by third-party providers, or because of other causes beyond Provider's reasonable control, but Provider shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, PROVIDER DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND PROVIDER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. INDEMNITY

7.1 Provider shall hold Customer harmless from liability to third parties resulting from: (a) infringement by the Service of any United States patent or any copyright or misappropriation of any trade secret, provided Provider is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Provider will not be responsible for any settlement it does not approve in writing; or (b) Provider's breach of its obligations under Section 3.1 or 3.2. The foregoing obligations do not apply to any action or losses arising out of or relating to any: (i) access to or use of the Services or Provider Materials in combination with any hardware, system, software, network or other materials or service not provided or authorized in the Specifications or otherwise in writing by Provider; (ii) modification of the Services or Provider Materials other than: (A) by or on behalf of Provider; or (B) with Provider's written approval in accordance with Provider's written specification; (iii) failure to timely implement any modifications, upgrades, replacements or enhancements made available to Customer by or on behalf of Provider; or (iv) act, omission or other matter described in clauses (a) or (b) of Section 7.2, whether or not the same results in any action against or Losses by any Provider Indemnitee. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Provider to be infringing, Provider may, at its option and expense

(a) replace or modify the Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality; (b) obtain for Customer a license to continue using the Service; (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for the Service.

7.2 Customer shall indemnify, defend and hold harmless Provider and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, a "Provider Indemnitee") from and against any and all Losses incurred by such Provider Indemnitee in connection with any action by a third party (other than an Affiliate of a Provider Indemnitee) to the extent that such Losses arise out of or relate to any: (a) Customer Data, including any Processing of Customer Data by or on behalf of Provider in accordance with this Agreement or any claim that Customer Data infringes or misappropriates a third party's Intellectual Property Rights; or (b) any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of Customer or any Authorized User, including Provider's compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User to the extent prepared without any contribution by Provider.

THIS SECTION 7 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND PROVIDER MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

8. LIMITATION OF LIABILITY

8.1 IN NO EVENT WILL PROVIDER OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES

OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

8.2 IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF PROVIDER UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE FEES PAID BY CUSTOMER PURSUANT TO THIS AGREEMENT FOR THE SERVICES GIVING RISE TO THE CLAIM OVER THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

9. MISCELLANEOUS

9.1 If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

9.2 This Agreement is not assignable, transferable or sublicensable by Customer except with Provider's prior written consent. Provider may transfer and assign any of its rights and obligations under this Agreement without consent.

9.3 This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No failure to exercise a right, remedy or privilege shall be construed as a waiver thereof. In the event of any inconsistency between these Terms and Conditions and the terms of any Order Form, these Terms and Conditions shall govern. Whenever a provision of this Agreement uses the term "include" or "including", that term shall not be limiting but shall be construed as illustrative.

9.4 No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Provider in any respect whatsoever.

9.5 In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any payment obligation), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a

"Force Majeure Event"), including strikes, embargoes, shortages of labor or materials, governmental regulations, acts of God, war or other strife. Either party may terminate this Agreement if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of thirty (30) days or more. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

9.6 In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

9.7 Except as provided for in Section 1.4, all notices, requests, consents, claims, demands, waivers and other communications under this Agreement have binding legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this Section 9.7):

If to Provider: legalnotices@ifoodds.com

If to Customer: Email address set forth on the Order Form.

9.8 This Agreement shall be governed by the laws of the State of Washington without regard to its conflict of laws provisions. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Washington in each case located in the city of Seattle and County of King, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT.

9.9 Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 3 or, in the case of Customer, Section 2.1, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to any equitable relief permitted by law. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

9.10 This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

9.11 Provider may from time to time in its discretion engage third parties to perform Services (each, a "Subcontractor").

9.12 This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

9.13 In the event of a conflict between the terms of this Agreement and an Order Form, that is not expressly resolved in those documents, the terms of this Agreement will control.

9.14 In the event that the individual who entered into this Agreement on behalf of Customer leaves the employment or affiliation with Customer, Customer shall identify another individual to serve as Customer's representative and Authorized User.

EXHIBIT A

SERVICE LEVEL TERMS; DATA SECURITY; DATA STORAGE

1. Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of the Agreement, during the Term, Provider shall use commercially reasonable efforts to provide to Customer and its Authorized Users the Services in accordance with the Specifications and terms and conditions hereof, including to host, manage, operate and maintain the Service Software for remote electronic access and use by Customer and its Authorized Users in substantial conformity with the Specifications 24 hours per day, seven days per week every day of the year, except for: (a) Scheduled Downtime; (b) Service downtime or degradation due to a Force Majeure Event; (c) any other circumstances beyond Provider's reasonable control, including Customer's or any Authorized User's use of Third Party Materials, misuse of the Services, or use of the Services other than in compliance with the express terms of this Agreement and the Specifications; and (d) any suspension or termination of Customer's or any Authorized Users' access to or use of the Services as permitted by this Agreement.

2. Except as otherwise expressly provided in this Agreement, as between the parties: (a) Provider has and will retain sole control over the operation, provision, maintenance and management of the Services and Provider Materials, including the: (i) Provider Systems; (ii) location(s) where any of the Services are performed; (iii) selection, deployment, modification and replacement of the Service Software; and (iv) performance of Support and Training services and Service maintenance, upgrades, corrections and repairs; and (b) Customer has and will retain sole control over the operation, maintenance and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Services and Provider Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions or materials provided by any of them to the Services or Provider; (ii) results obtained from any use of the Services or Provider Materials; and (iii) conclusions, decisions or actions based on such use.

3. Provider reserves the right, in its sole discretion, to make any changes to the Services and Provider Materials that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of Provider's services to its customers; or (ii) the competitive strength of the market for Provider's services; or (b) to comply with applicable Law. In addition, Provider may provide product upgrades/modifications/changes to the Services and associated products. Upgrades/modifications/changes may be made as part of Provider's regularly scheduled product release cycle or based on Customer requests. Upgrades/modifications/changes made according to Provider's regularly-scheduled product plan and release cycle will be made available to Customer without charge. Upgrades/modifications/changes requested by Customer outside of Provider's regularly-scheduled product plan and release cycle will be provided to Customer on a time and materials basis as set forth in a change order executed by Provider and Customer. Notwithstanding the foregoing:

a. If Provider discontinues the availability of Services, Provider shall provide a minimum of one hundred eighty (180) days prior written notice to Customer before discontinuing such availability of Services without providing a successor product or service, in which case Customer shall have the right to immediately terminate the Agreement with respect to such discontinued Services by written notice to Provider, and Provider shall refund to Customer any unused or unearned, prepaid Recurring Fees attributable to the period following such termination. If Customer does not provide such termination notice, this Agreement shall nevertheless terminate as to the Services upon their discontinuation.

b. If Provider discontinues availability of Services because such Services have reached the end of their product lifecycle, Provider shall provide a minimum of one hundred eighty (180) days prior written notification to Customer of such discontinuation and will assist Customer with the migration of data and user accounts to the latest version of the discontinued Service prior to discontinuing the Services and the provision of security and non-security updates.

4. The Provider Systems are programmed to perform routine data backups. Provider will deliver to Customer its then most current back-ups of Customer Data as and when requested at Provider's then-current hourly rates for such services. In the event of any loss, destruction, damage or corruption of Customer Data caused by the Provider Systems or Services, Provider will, as its sole obligation and liability and as Customer's sole remedy, use commercially reasonable efforts to restore the Customer Data from Provider's then most current backup of such Customer Data.

5. Provider will employ data security measures in accordance with industry best practices. Provider's data privacy and security policy may be amended by Provider from time to time.

6. Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer

Systems; (d) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and Provider Materials directly or indirectly by or through the Customer Systems or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

7. Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services (including firewall protection and appropriate security software on individual devices); and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Services. In the event of the termination of an employee who is an Authorized Users or such other circumstances warranting changes to access to the Services by Authorized Users, Customer shall promptly notify Provider for account deactivation and/or password changes.