



## Partner Program Agreement

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY SIGNING THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS ASC PARTNER PROGRAM AGREEMENT AND THE PROGRAM POLICIES, ALL OF WHICH ARE INCORPORATED INTO AND FORM PART OF THIS ASC PARTNER PROGRAM AGREEMENT (COLLECTIVELY, THE "AGREEMENT"). THE AGREEMENT SHALL GOVERN YOUR ENROLLMENT AND PARTICIPATION IN ASC'S PARTNER PROGRAM (THE "PROGRAM" AS FURTHER DEFINED BELOW). YOU ALSO REPRESENT THAT YOU HAVE READ AND UNDERSTAND ALL OF THE PROVISIONS OF THIS AGREEMENT. YOU MUST ACCEPT THIS AGREEMENT BEFORE YOU CAN PARTICIPATE IN THE PROGRAM.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT, IN WHICH CASE THE TERMS "YOU," OR "YOUR," SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT (BY SELECTING THE "I ACCEPT" BUTTON OR SIGNING THE AGREEMENT) AND MAY NOT ENROLL OR PARTICIPATE IN THE PROGRAM.

YOU MAY NOT ACCEPT THIS AGREEMENT IF YOU ARE OUR DIRECT COMPETITOR, EXCEPT WITH OUR PRIOR WRITTEN CONSENT.

THE "EFFECTIVE DATE" OF THIS AGREEMENT SHALL BE THE DATE OF YOUR ACCEPTANCE OF THE AGREEMENT OR THE LATTER DATE THIS AGREEMENT IS SIGNED BY YOU OR US, AS THE CASE MAY BE.

### 1. DEFINITIONS

"**Close Family Member**" means the spouse, the individual's and the spouses' grandparents, parents, siblings, children, nieces, nephews, aunts, uncles, first cousins, the spouse of any of these people, or any other individuals who share the same household.

"**Consulting Partner**" means a partner of Ours that offers implementation, integration and/or custom development services related to the Services.

"**Consulting Services Listing**" means a listing for services offered by Consulting Partners which You submit to Us for display on Our Website if such Program Benefit is applicable to Your Program Type and Program Level..

"**End User**" means a third party that is licensed to use the Services for its own business operations or is targeted as an Opportunity for such licensing.

"**First Year Net Revenue**" means, with respect to a Qualified Purchase, the subscription fees owed by Our applicable referred customer by reason of such Qualified Purchase (net of any discounts, taxes payable and subsequent refunds not due to incorrect invoicing or a contract breach by Us) over the 12-month period beginning on the subscription start date of the Qualified Purchase. First Year Net Revenue does not include fees for support, implementation, customization, training, consulting or other professional services, or fees for third-party products or services.

"**Government Official**" means anyone that works for or on the behalf of a:

- national, regional, municipal, or local government;
- department, agency, subsidiary, or branch of a national, regional, municipal, or local government;
- government-owned or government-controlled company (for example, a state-owned oil company, bank, airline, hospital, university, etc.);
- subsidiary of a government-owned or government-controlled company;
- public international organization (for example, the International Monetary Fund, the United Nations, the World Bank, the World Trade Organization, etc.);
- member of a royal family; or
- political party, political party official, or candidate for political office.

"**Membership Qualifications**" means the requirements applicable to the designated Program Level of partnership in a Program Type.

"**Order Form**" means the ordering documents applicable to certain Partner Program Benefits, including addenda to such



ordering documents, that are entered into between You and Us under this Agreement from time to time. Order Forms shall be deemed incorporated herein by reference.

**"Opportunity"** means, in Our reasonable determination: (i) a referral of someone who is not at the time of the referral an End User customer of Ours, or a new subsidiary, division or other distinct business unit of a pre-existing End User customer of Ours; or (ii) a purchase of additional Services subscriptions (as opposed to a renewal of pre-existing subscriptions), or an upgrade in the customer's edition of the Services, in either case for a minimum of a one year subscription term by a pre-existing End User customer of Ours, which purchase resulted from Your specific sales efforts related to such additional purchase; provided, that the order must be executed within 6 months of the referral, and the Opportunity cannot be (a) an existing opportunity of Ours then currently, or during the prior sixty (60) days, in Our active sales process, or (b) Your affiliate which controls, is controlled by, or is under common control with, You. For clarity, an Opportunity does not include any purchase made by You on behalf of an End User.

**"Partner Portal"** means Our website that enables You to facilitate the partner relationship with Us, including the ability to log cases, explore partner resources, view upcoming partner events, and use online Opportunity registration.

**"Partner Exchange"** means Our online Platform partner listing of certain consulting partner services and Platform Applications. Among other things the Partner Exchange allows partners to list, and allows users to review, test drive, and/or install partner Platform Applications.

**"Program"** means, collectively, the partner program and policies governing Your participation in the Program, as set forth in this Agreement and in the Program Policies. This Program covers Consulting Partners, ISV Partners and Referral Partners and shall expressly exclude reseller relationships (including without limitation original equipment manufacturer (OEM) and value added reseller (VAR) relationships), which are governed by a separate agreement and application process with Us.

**"Platform"** means Our Web-based technology platform portion of the Services that includes a user interface, operating system, customization and integration capabilities for Our on-demand Services, and a framework for development and deployment of on-demand applications.

**"Platform Application"** means a Web-based, on-demand application or downloadable software application that interoperates with and is listed on the Platform.

**"Platform API"** means Our application programming interface that supports interoperation of the Platform with applications or services residing outside Our systems.

**"Program Benefits"** means the materials and/or services that may be provided to You under this Agreement, depending on Your Program Type and Program Level, some of which may be subject to Your payment of additional fees.

**"Program Level"** means the level of Your participation in a Program Type and are subject to change from time to time.

**"Program Policies"** means the aggregate of policies and documentation describing the Program, Program Types, Levels, Benefits, Membership Qualifications and other policies governing Your participation in the Program, as set forth in this Agreement and on Our Partner Portal.

**"Program Type"** means a sub-category of the Program that has a particular scope and particular set of Program Benefits, as set forth in this Agreement and the Program Policies. Program Types may have multiple Program Levels.

**"Partner User"** shall mean Your employee (or contractor that has signed a nondisclosure agreement protecting the rights of third parties including Our rights hereunder) who is authorized by You to use the Partner Portal or the Services and who has been supplied user identifications and passwords by You (or by Us at Your request).

**"Qualified Purchase"** means, in Our reasonable determination, a purchase of five or more annual (or longer) Services subscriptions that is fully executed and closed within six months of the corresponding Opportunity referral.

**"Referral Partner"** means a partner of Ours that is being compensated for submitting Opportunities to Us that result in a Qualified Purchase.

**"Services"** means the online, Web-based applications and platform provided by Us, that are ordered by Our customers or otherwise provided to You in accordance with this Agreement, including associated offline components, but excluding any third party applications.



"We," "Us" or "Our" means the ASC company described in Section 21 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).

"You" or "Your" means the company or other legal entity on whose behalf you have accepted this Agreement.

"Your Application" means any application that You submit to Us for review and/or listing under this Agreement.

## **2. PROGRAM OVERVIEW**

### **2.1 Enrolment.**

You will be enrolled in the Program on acceptance of this Agreement.

### **2.2 Membership Qualifications and Program Benefits**

By enrolling in the Program, You represent that You will continue to meet and comply with such requirements for the duration of Your enrolment therein. Upon written notification, We may elect to elevate You to another Program Type or Program Level, with additional benefits, if We determine You meet Our applicable Membership Qualifications. Notwithstanding anything to the contrary in this Agreement, if at any time We determine You are enrolled in a Program Type or at a Program Level for which You do not meet the Our Membership Qualifications, We may, at our sole discretion, reclassify Your membership to a Program Type and Program Level which You do qualify for, effective immediately upon Our written notification to You of such reclassification. You also agree to notify Us in writing if You no longer meet Our Membership Qualifications.

The Program Policies, including Program Benefits and Membership Qualifications described therein, are subject to change in Our sole discretion; however, Program Benefits will not be materially decreased, and Membership Qualifications shall not be materially altered, for You during a term for which You have paid fees for the applicable Program. You are responsible for reviewing the Program Policies regularly.

### **2.3 Fees.**

There are currently no fees required for Your enrolment into the Program, however, certain Program Types, Program Levels and Program Benefits may be subject to fees as described in the Program Policies. Some of the Program Benefits subject to fees may require the execution of an Order Form. Your continued membership in the Program is at all times subject to Your timely payment of any applicable fees for Your Program Type, Program Level and Program Benefits. Fees are payable annually in advance, within thirty (30) day(s) of the invoice date, unless stated otherwise in the Program Policies. Fees are subject to change at Our discretion. Payment obligations are non-cancellable and fees paid are non-refundable.

### **2.4 Partner Subsidiaries.**

Each wholly and majority owned subsidiary that desires to be included as a member in the Program must complete its own membership and separately accept this Agreement.

### **2.5 Opt-in to Marketing.**

Your participation in the Program will serve as an opt-in to receive Our marketing communications that We may deem relevant to Our partners. You will be presumed to have provided appropriate notices and have obtained appropriate consents, if required, from any persons or Partner Users who are signed up to the Program on Your behalf. You may elect to opt-out from receiving Our marketing materials by contacting Us directly.

## **3. REFERRAL PAYMENTS**

Following Your enrolment into the Program, We will pay You a referral fee for each Opportunity You submit to Us and which is accepted by Us and that results in a Qualified Purchase.

### **3.1 Referral Fees.**

Unless otherwise specified in the Program Policies for Your Program Type, for each Opportunity that You submit to Us and which is accepted by Us and that results in a Qualified Purchase, We will pay You a referral fee, in an amount as specified in the Program Policies as applicable to Your Program Type and Program Level and location based upon the First Year Net Revenue for such Qualified Purchase.

### **3.2 Payments.**



We will be solely responsible for billing customers of the Services and collecting payment. We will pay fees owed to You for any Qualified Purchase in the applicable manner set forth in the Program Policies. We will provide a summary report with each payment showing how the payment was calculated. If either party determines an error was made in the calculation of payment, each party agrees to work diligently and in good faith to resolve the error and to ensure proper payment is made.

If for any reason a referral payment is made to You in error, or in the event a referred customer fails to make a required payment of first-year subscription fees to Us for a Qualified Purchase within 60 days after the payment due date, or if the applicable customer agreement is terminated before the expiration of its stated term, We shall be entitled to a refund of the corresponding payments made to You. We may, in Our sole discretion, offset such refundable amounts against fees owed to You by Us hereunder, or invoice You for such refundable amounts. Any such invoiced amounts are due and payable by You within 30 days after the invoice date. If You refund fees to Us because of a referred customer's non-payment, and We later collect the corresponding fees from such customer, We will repay You the applicable referral fee for such Qualified Purchase less a deduction to cover one-half of Our collection and administrative costs, such deduction not to exceed one-half of the fee to which You would otherwise have been entitled. Our right to a refund with respect to any Qualified Purchase shall expire 90 days after the one-year anniversary of the subscription start date of that Qualified Purchase.

Any payments made to You under this Agreement will be made only by cheque mailed to Your address as noted in this Agreement or by bank transfer to Your bank account in the country of that address. Cheques and wire transfers will be made only in the name as listed in this Agreement. Any other payment arrangements must be pre-approved by Our Legal Department.

### **3.3 Opportunity Submission.**

Upon Your enrolment into the Program, You will receive via email a link and log-in credentials (i.e. username and password) to the Partner Portal, which shall include access to an online deal registration application for the purpose of submitting Opportunities. You must complete and submit deal (lead) registrations via the Partner Portal for each potential Opportunity. We will then determine if Your deal (lead) registration qualifies as an Opportunity and notify You via email of the approval or rejection of such deal (lead) registration. If the parties exchange information regarding Opportunities through the Partner Portal, both parties agree to use the information therein solely for purposes related to this Agreement. In submitting personal data regarding an Opportunity or deal (lead) registration, You are responsible for complying with all applicable laws governing Your collection, storage, processing, use and transfer of such information. You authorize Us to process such data as reasonably required to exercise Our rights and perform Our obligations under this Agreement. We will process and use personal data in accordance with the instructions received from You, and will not process or use such data in a manner different from that necessary to carry out Our obligations under this Agreement, provided however, that We may be required to provide personally identifiable information to third parties to comply with legally mandated reporting, disclosure, or other legal process requirements. As the data provider, You warrant that You have provided all appropriate notices to the data subjects and have obtained all appropriate consents to transfer the data to Us and allow its processing according to the terms of this Agreement.

### **3.4 Exclusions from Payment Obligations.**

Notwithstanding any other provisions of this Agreement, You will not be entitled to referral fees or any other compensation on any sale if (a) such compensation is disallowed or limited by federal, state or local law or regulation in Canada, the United States or the laws or regulations of Your jurisdiction; (b) the applicable End User customer prohibits the inclusion of such compensation in the price of the contract or excludes such compensation from its payments to Us; or (c) the End User customer has paid or will pay such commissions, referral fees, or other compensation directly to You.

## **4. COMPLIANCE WITH APPLICABLE LAWS**

### **4.1 Your Compliance with Applicable Laws.**

You shall comply, and shall ensure that any third parties performing sales or referral activities on Your behalf comply, with all applicable foreign and domestic laws, governmental regulations, ordinances, and judicial administrative orders, including, but not limited to, the Canadian Corruption of Foreign Public Officials Act, the United States Foreign Corrupt Practices Act and applicable export control laws or regulations (collectively "Applicable Laws") and shall not engage in any deceptive, misleading, illegal or unethical marketing activities, or activities that otherwise may be detrimental to Us, Our customers, the Services, or to the public. You represent and warrant that Your sales activities and receipt of any referral fees under this Agreement are consistent with Applicable Laws. You shall promptly inform Us in writing upon becoming aware of any violations of Applicable Laws in connection with this Agreement.



Without limiting the generality of Your obligations under this Agreement, You hereby represent and warrant that, with respect to Your submission of Opportunities for payment by Us, and/or in the performance of any of Your other activities hereunder:

- a. No portion of any fees paid or payable by Us to You hereunder will be paid to, or accrued directly or indirectly for the benefit of, any person, firm, corporation or other entity, other than You.
- b. You have not, and will not at any time, directly or indirectly, pay, offer, give or promise to pay or give, or authorize the payment of, any monies or any other thing of value to: (i) any officer or employee of any government, or any department, agency or instrumentality thereof; (ii) any other person acting in an official capacity for or on behalf of any government, or any department, agency or instrumentality thereof; (iii) any political party or any official or employee thereof; (iv) any candidate for political office; (v) any other person, firm, corporation or other entity at the suggestion, request or direction of, or for the benefit of, any government officer or employee, political party or official or employee thereof, or candidate for political office; or (vi) any other person, firm, corporation or other entity with knowledge that some or all of those monies or other thing of value will be paid over to any officer or employee of any government department, agency or instrumentality, political party or officer or employee thereof, or candidate for political office. It is the intent of the parties that no payments or transfers of anything of value shall be made which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business or any improper advantage.

#### **4.2 Disclosure of Third Parties.**

To enable Us to comply with Applicable Laws, You must notify Our Legal Department (legal@ascnet.com) in advance if You plan to use any third party subcontractor, consultant, agent, or other intermediary to assist You in promoting Our products and services under this Agreement, We will have the authority to accept or reject any proposed third party.

#### **4.3 No Affiliation with Government Officials - Disclosure Obligation.**

To the extent any director, employee, direct or indirect owner, representative, consultant or agent who is or will be involved in Your promotional or referral activities for Us, is a Government Official or a Close Family Member of a Government Official, You shall disclose such fact in writing to Our Legal Department (legal@ascnet.com ) and receive acknowledgement by Our Legal Department of such disclosure. If during the term of this Agreement there is a change in the information You have disclosed to Us as required by this paragraph, You agree to make immediate disclosure to Our Legal Department. If, in Our opinion, such changes create a heightened risk of noncompliance with Applicable Laws, such changes may constitute grounds for Our termination of this Agreement. If Your director, employee, direct or indirect owner, representative, consultant, or agent is a Government Official, then You shall immediately disclose such fact to Our Legal Department (legal@ascnet.com). You shall cooperate reasonably with any requests by Us for further information regarding such relationship.

#### **4.4 Disclosure of Contact or Communication with Government-Owned Companies, Government- Controlled Companies, or Government Officials.**

If You contact or communicate with any government-owned company, government-controlled company, or Government Official on Our behalf, You shall so notify Our Legal Department (legal@ascnet.com) as soon as practicable. If You intend or propose to, or do, contact or communicate with any government-owned company, government-controlled company, or Government Official on Our behalf, You may be subject to additional questions, training, and due diligence, as determined by Us.

#### **4.5 Export Restrictions.**

The Your Applications, the Platform and the Services and any related products or services may be subject to international rules that govern the import, export and re-export of goods and/or technology. You shall comply with all applicable international and domestic import, export and re-export laws that apply to Your Applications, the Platform and the Services and, any related products or services, as well as end-user, end-use and destination restrictions imposed by national governments. Your Applications, the Platform and the Services are subject to the Export and Import Permits Act (including related regulations) in Canada and are also subject to the Export Administration Regulations ("EAR") in the United States and thus may not be exported, re-exported, or downloaded by any person in any controlled countries under the Canadian Export Control List or the U.S. EAR, which currently include Belarus, Iran, North Korea, Cuba, Syria and Sudan. Moreover, Your Applications, the Platform and the Services may not be exported, re-exported, or downloaded by any person or entity subject to U.S. or Canadian international sanctions regardless of location. See the applicable Canadian and U.S. lists before engaging in discussions with a





potential customer. You agree that these export control laws govern use of Your Applications, the Platform and the Services and that no data, information, software program and/or materials resulting from Your Applications, the Platform and the Services or their related products or services, will be exported, directly or indirectly, in violation of these laws.

#### **4.6 Periodic Certification and Agreement to Report Violations.**

You agree that You will periodically, at Our request, certify that You have not, and to Your knowledge no other person, including but not limited to every owner, director, employee, representative and agent of You has made, offered to make, agreed to make, or authorized any payment, loan, donation or gift of money or anything else of value, directly or indirectly, to or for the benefit of any Government Official, to obtain or retain business, or secure any improper advantage. You further agree that should You learn of information regarding any such payment or offer in connection with Our business, You will immediately advise Our Legal Department (legal@ascnet.com) of such knowledge or suspicion.

#### **4.7 Our Compliance.**

We shall comply with all Applicable Laws in performing Our obligations hereunder.

### **5. SERVICES, COMPLIANCE AND TECHNICAL TRAINING**

Your sales representatives generating leads for the Services must be reasonably capable of effectively delivering Our value proposition and must be generally knowledgeable about the Services and their interfaces, advantages and high-level functionality. If applicable to Your Program Type, We may offer You Services and/or technical training for free or for an additional fee as described in the Program Policies. You agree that Your sales representatives and other personnel to the extent engaged in marketing and generating leads for the Services will use reasonable efforts to participate in the basic online training offered for free by Us to Our users generally. As We upgrade the Services, Your sales representatives and other personnel may be asked to undergo further training to become proficient in generating leads based on the Services' new features and functions. You and Your personnel agree to make reasonable, good faith efforts to participate in such further training.

You agree to use reasonable efforts to advise Us of any demonstrations required to market the Services to prospective customers, especially those with a service group of greater than twenty (20) people.

You agree that You, Your sales representatives, and anyone working on Our behalf may be subject to compliance training as determined by Us. Failure to agree to compliance training programs may result in a termination of this Agreement or a modification by Us of Your Program Type, Program Level and/or Program Benefits.

### **6. PARTNER EXCHANGE**

Certain Program Types and Program Levels entitle You to the Partner Exchange Program Benefit, which allows for the marketing of Your products or services on the Partner Exchange. In addition to the terms in the body of this Agreement, Your use of the Partner Exchange Program Benefit shall further be subject to the terms and conditions set forth in Addendum A. If You are not entitled to, or are not utilizing the Partner Exchange Program Benefit, then the terms and conditions applicable solely to the Partner Exchange Program Benefit, including Addendum A, shall not apply to You.

### **7. TECHNICAL SUPPORT**

As a member of the Program, You may be eligible to receive certain technical support offerings as described in the Program Policies. Such technical support program offerings are provided under Our technical support policies in effect at the time the services are provided. For purposes of this Agreement, technical support does not include support for third party programs or services. Our technical support policies are subject to change at Our discretion.

### **8. LICENSES**

#### **8.1 Our Licenses to You.**

As a member of the Program You are entitled to the following licenses and/or access and use rights as set forth below, subject to Your classification in an applicable Program Type and Program Level where such rights apply.

##### **A. Services Subscriptions**

If applicable to Your Program Type, then upon Us providing You with log-in credentials You will be granted a non-exclusive, non-transferable limited right to access and use the Services for limited partner purposes described in this Agreement,



including the Program Policies. Unless otherwise stated in the Program Policies, Services subscriptions shall be used solely for: (a) demonstration of the Services to potential End Users solely in connection with Your Program membership, (b) development and/or testing purposes related to Your Program Type as set forth in the Program Policies, (c) training for the Services and the value added package to Your employees, (d) integration of the Services with Your products or services applicable to Your Program Type, and (e) license management of Your Services offered in connection with your Program Type. Your use of any Services subscriptions is further subject to the restrictions set forth in Section 10 herein.

## **B. Marketing Services**

If applicable to Your Program Type We grant You a non-exclusive, nontransferable, limited license to use those portions of the Our marketing programs, marketing materials and tools, as further described in the Program Policies solely for the purpose of creating, executing, and monitoring marketing campaigns related to Our products and services. Your use of the Marketing Services shall be subject to this Agreement and Our logo and advertising style guide policies. We may change the logo, advertising guidelines and location thereof at any time, and, upon reasonable notice from Us, You shall promptly modify Your use of the Marketing Services to conform to any such changed guidelines.

You may allow third parties to access the Marketing Services for the purpose of creating, executing, and monitoring marketing campaigns related to Our products and services on Your behalf, provided that You ensure that all such use is in accordance with this Agreement. You agree to be responsible for any misuse of the Marketing Services by You or any third party using the Marketing Services on Your behalf and You agree to use the Marketing Services at Your own risk.

You shall cooperate with Us to allow for review of Your use of the Marketing Services and compliance with Our quality standards. If We, in Our sole discretion, determine that Your use of the Marketing Services is not in compliance with this Agreement, You shall promptly modify or discontinue Your use as directed by Us. In the event that Marketing Services include payments to You, then You shall maintain adequate books and records regarding the basis for such payments and shall provide Us copies of such records upon request.

## **C. Platform**

Subject to the terms and conditions of this Agreement, We grant You a worldwide license during the term of this Agreement to use the Platform to (i) create Your Applications, (ii) operate Your Applications and third-party applications for testing, demonstration and support purposes, and (iii) create software to integrate the Platform, Your Applications and third-party applications with Your systems.

## **D. Platform API and Partner Exchange**

To the extent You are entitled to the Partner Exchange Program Benefit for the purpose of listing Your Application with Us, subject to the terms and conditions of this Agreement, we hereby grant You a nonexclusive, worldwide, royalty-free license during the term of this Agreement under Our intellectual property rights, to access the Platform API through Your Applications, and to permit Your users to access their data through Your Applications and the Platform API.

## **8.2 Your License to Us.**

### **A. Partner Exchange**

In addition to any other licenses You grant to Us in this Agreement, to the extent You have requested Us to list Your Consulting Services Listing, or Your Application, on the Partner Exchange with Us pursuant to the Platform Application Program Benefit, You hereby grant Us the following licenses:

- a. a nonexclusive, worldwide, fully paid-up, royalty-free license, for as long as Your Applications and/or Consulting Services Listings are listed on the Partner Exchange, to (I) market Your Applications and/or Consulting Services Listings and (II) to the extent You request Us to list Your Applications with "Test Drive," "Get it Now" or similar functionality, to permit others to access, install, and (in the case of downloadable software applications) download Your Applications through the Partner Exchange. You represent and warrant that You own or possess all intellectual property and other rights necessary to grant Us this license.
- b. a nonexclusive, worldwide, perpetual, irrevocable, fully paid-up, royalty-free, transferable license under Your intellectual property rights, to make, use, sell, copy, distribute modify and otherwise exploit, and to grant sublicenses to do all of the foregoing with respect to, any modifications, improvements or enhancements created by You to the Platform and the Platform API.



## **B. Services Suggestions**

You grant Us a royalty-free, fully paid-up, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use, incorporate into the Services and otherwise exploit any suggestions, enhancement requests, recommendations or other feedback provided by You relating to the operation of the Services.

### **8.3 Trademark Cross License.**

Subject to Your Program Type and Program Level, each party hereby grants to the other a worldwide, nonexclusive, nontransferable, non-sublicenseable, royalty-free license to use, in Your case, "ascnet.com", "asccontracts.com", "ascdocuments.com", "ascforms.com", and in the case where the Partner Exchange Program Benefit applies to You "ASC Platform" and "ASC Platform App" and the associated logos and, in Our case, Your company name and in the case where the Partner Exchange Program Benefit applies, Your Application name, and the associated logos (collectively, "Marks") solely in connection with each party's rights, duties and obligations under this Agreement.

Any use of Marks shall be in accordance with the granting party's reasonable trademark usage policies, with proper markings and legends. Neither party shall make any express or implied statement or suggestion, or use the other party's Marks in any manner, that dilutes, tarnishes, degrades, disparages or otherwise reflects adversely on the other party or its business, products or services. Each party shall cease, or adjust the manner of, its use of any Mark of the other party at the request of the other party in its sole discretion. The granting party may withdraw any approval of any use of its Marks at any time in its sole discretion.

## **9. INTELLECTUAL PROPERTY OWNERSHIP**

### **9.1 Technology.**

Subject to the limited licenses set forth in this Agreement, nothing in this Agreement transfers or assigns to Us any of Your intellectual property rights in Your Applications or Your other technology, products or services (including without limitation any source code developed by You using the Platform), and nothing in this Agreement transfers or assigns to You any of Our intellectual property rights in the Partner Exchange, the Platform, the Platform API, Marketing Services, or Our other technology, products or services ("Our Property").

### **9.2 Trademarks.**

Our Marks, "ASC", "ASC Contracts", "ASC Documents", "ASC Forms", "ASC Platform", the "Tailored Contract, Document and Form Management Company" logo and other of Our marks used on Our websites are Our trademarks or service marks and may not be used in any manner except as expressly permitted herein or with Our prior written consent. Your Marks are Your trademarks or service marks and may not be used in any manner except as expressly permitted herein or with Your prior written consent.

You may include "for ASC" in the names of Your Applications while they are listed on the Partner Exchange. You shall not bid on or purchase any keyword which is Our trademark (including without limitation ASC, ASC Contracts, ASC Documents, ASC Forms or ASC Platform) in any keyword advertising service (such as, for example, Google AdWords). You may not publish any online advertisement which includes any of Our trademarks, including those identified herein, without prior review and approval of Your proposed ad and related website by our legal and SEM teams. You may forward requests for review and approval to [legal@ascnet.com](mailto:legal@ascnet.com).

### **9.3 Competitive Applications.**

Subject to Our and Your respective rights and obligations under this Agreement, We acknowledge that You and/or other parties may develop and publish applications that are similar to or otherwise compete with Our applications, products and services, and You acknowledge that We and/or other parties may develop and publish applications that are similar to or otherwise compete with Your Applications, products or services.

## **10. RESTRICTIONS**

### **10.1 Restrictions on Use of the Services and Partner Portal.**

You are responsible for all activities that occur in Partner User accounts, and for Partner Users' compliance with this Agreement. In no event shall You (i) license, sublicense, sell, resell, transfer, assign, distribute or (except as provided in this





Agreement) otherwise commercially exploit or make available to any third party the Services or Partner Portal in any way; (ii) modify or make derivative works based upon the Services or Partner Portal; (iii) create Internet "links" to the Services or Partner Portal or "frame" or "mirror" it on any other server or wireless or Internet-based device; (iv) send or store any virus, worm, time bomb, Trojan horse or other harmful or malicious code, file, script, agent or programs; (v) interfere with or disrupt the integrity of performance of the Services, or Partner Portal, or the data contained therein; (vi) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material; or (vii) reverse engineer or access the Services or Partner Portal for the purpose of (a) building a competitive product or service, (b) building a product using similar ideas, features, functions or graphics of the Services or Partner Portal, or (c) copying any ideas, features, functions or graphics of the Services or Partner Portal. Partner User subscriptions cannot be shared or used by more than one individual user but may be reassigned from time to time to new users who are replacing former users who have terminated employment or otherwise changed job status or function and no longer need to use the Services under this Agreement.

## 10.2 Additional Restrictions.

In addition to any other restrictions set forth in this Agreement, Your use of any Program Benefits, including Our Property provided to You hereunder, is further subject to the restrictions set forth below, You may not:

- Remove or modify any program markings or any notice of Our or Our licensors' proprietary rights;
- Make the Services, any materials delivered hereunder, or any materials resulting from the services available in any manner to any third party for use in the third party's business operations, other than as expressly permitted herein or in the Program Policies for Your Program Type;
- Use Our Property in a manner that misrepresents Your relationship with Us or is otherwise misleading or that reflects negatively on Us;
- Use or duplicate Our Property provided to You for any purpose other than as specified herein, or in the Program Policies or make Our Property available to unauthorized third parties;
- Use Our Property for Your own internal business operations, or use or make Our Property available in any manner to any third party for use in the third party's business operations or for any other commercial or production use, other than as expressly permitted herein or in the Program Policies applicable to Your Program Type and Program Level; or
- Create any content or otherwise transmit any information or material that: (1) is false or misleading; (2) is harassing or invades another's privacy, harms minors in any way, or promotes bigotry, racism, hatred or harm against any group; (3) is obscene; (4) infringes another's rights, including but not limited to intellectual property rights; (5) constitutes unsolicited commercial email or "spam"; or (6) violates any applicable laws or regulations. You, and not Us, are responsible for all content and other materials that You upload, post, email or otherwise transmit in using Our Property.

## 11. WARRANTIES; DISCLAIMERS AND REMEDIES

**WE DISCLAIM ALL REPRESENTATIONS WARRANTIES AND CONDITIONS REGARDING THE SERVICES AND PARTNER PORTAL, THE PROGRAM, OUR MARKETING SERVICES, PROGRAM BENEFITS, THE PARTNER EXCHANGE, THE PLATFORM API, OR THIRD PARTY SERVICES AND PRODUCTS LISTED ON THE PARTNER EXCHANGE (THE "OFFERINGS"), WHETHER EXPRESS, IMPLIED OR STATUTORY, ORAL OR IN WRITING, ARISING UNDER ANY LAW, INCLUDING WITH RESPECT TO VALIDITY, NON-INTERRUPTION, ERROR-FREE OPERATION, MERCHANTABILITY, MERCHANTABLE QUALITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. IN NO EVENT WILL WE BE LIABLE TO YOU OR TO ANY OTHER INDIVIDUAL OR ENTITY AFILIATED WITH YOU FOR ANY CLAIM, LOSS OR DAMAGE ARISING OUT OF THE OPERATION OR AVAILABILITY OF THE OFFERINGS.**

## 12. RELATIONSHIP OF THE PARTIES

This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between You and Us. Any use of the term "partner" or "partnering" or similar terminology (except as used in the immediately preceding sentence of this Section) does not mean or refer to a legal partnership, but instead means or refers to a co-operative business or contractual relationship. Nothing on any purchase order or preprinted form shall add to or vary the terms of this Agreement. Neither party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party, nor to represent the other party as agent, employee, franchisee, or in any other capacity. There are no third-party beneficiaries to this Agreement. You shall not make any proposals, promises, warranties, guarantees, or representations on Our behalf or in Our name.



### 13. TERM, TERMINATION & RENEWAL

#### 13.1 Term.

This Agreement shall remain in effect for one (1) year from the date of Your acceptance of this Agreement ("Effective Date").  
cla\_RenewalTerms

#### 13.2 Termination for Cause.

Either party may immediately terminate this Agreement upon written notice to the other party if (a) the other party becomes the subject of a petition in bankruptcy or other proceeding relating to insolvency, or makes an assignment for the benefit of creditors, (b) the other party is acquired by or becomes the terminating party's competitor, (c) the other party breaches its confidentiality obligations under this Agreement or infringes or misappropriates the terminating party's intellectual property rights, (d) it determines, based on one or more customer or prospect complaints, that the other party's actions or statements creates a significant risk of harm to the terminating party's reputation or customer relationships, (e) the other party has committed fraud or misrepresentation with respect to entering into and/or the performance of this Agreement, (f) a party learns of circumstances that give it reason to believe that the other party has engaged in illegal conduct or unethical business practices in connection with performance of this Agreement; (g) the other party, or any of its owners or employees responsible for providing services under this Agreement have become the target of an investigation or prosecution by any governmental authority for alleged corruption, or (h) the other party has violated Section 4 herein ("Compliance with Applicable Laws"). Subject to the foregoing, either party may terminate this Agreement upon 30 days' written notice to the other party of such other party's material breach if the breach is not cured during that period. We may suspend Your Program Type Program Benefits during any period in which You are in breach of the Agreement. Termination of this Agreement for cause shall be in addition to, and not in lieu of either party's other legal rights and remedies.

#### 13.3 Termination for Convenience.

Either Party may terminate this Agreement for convenience upon 30 days' written notice to the other party, provided that We may not terminate for convenience with respect to a term for which You have already paid any applicable fees.

#### 13.4 Effect of Termination.

Upon termination or expiration of this Agreement, You shall cease to be a member of the Program and all of Your rights to receive the Program Benefits detailed in this Agreement and the Program Policies and to use Our Property shall cease. Notwithstanding the foregoing, if this Agreement terminates (except where We have terminated You for cause), any of Your Applications for which You have paid a fee to have listed on the Partner Exchange may continue to remain listed on the Partner Exchange for the remainder of the listing term for which You have paid, subject to the terms and conditions of the listing agreement.

Provisions that survive termination or expiration include those relating to limitation of liability, indemnification, confidentiality, payment, and others which by their nature are intended to survive.

### 14. CONFIDENTIALITY

#### 14.1 Definition of Confidential Information.

As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Our Confidential Information shall include, without limitation, non-public aspects of the Platform; Partner Portal, Partner Exchange, Our and third party applications; the Services, and Our Customer Data (as defined in Addendum A) to which You have access through Our system where the Partner Exchange Program Benefit and Addendum A applies to You. Your Confidential Information includes, but is not limited to Your applications; business and marketing plans; technology and technical information; products designs; and business processes. Confidential Information of each party shall include the terms and conditions of this Agreement, discussions regarding the partner relationship. However, Confidential Information (except for Our Customer Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without breach of an obligations owed to the



Disclosing Party or any infringement or misappropriation of the Disclosing Party's intellectual property.

#### **14.2 Protection of Confidential Information.**

Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

#### **14.3 Compelled Disclosure.**

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

### **15. LIMITATION OF LIABILITY**

**15.1 NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, SAVINGS, OPPORTUNITIES, DATA, OR DATA USE OR ANY BUSINESS DISRUPTION, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. OUR MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, SHALL BE LIMITED TO THE APPLICABLE FEES YOU PAID US UNDER THIS AGREEMENT FOR THE YEAR DURING WHICH A CLAIM IS MADE. NOTWITHSTANDING THE FOREGOING, THE ABOVE LIMITATIONS ON LIABILITY SHALL NOT APPLY TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 16 HEREUNDER OR ANY BREACH OF CONFIDENTIALITY UNDER SECTION 14 OR ANY VIOLATION OF ANY PRIVACY LAWS.**

**15.2** Every right, exemption from liability, release, defence, immunity and waiver of whatsoever nature applicable to a party under this Agreement shall also be available and shall extend to benefit and to protect such party's officers, directors and employees and for such purposes such party is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of such persons.

### **16. INDEMNIFICATION**

#### **16.1 Indemnification by Us.**

Subject to this Agreement, We shall defend You against any suits, actions or proceedings ("Claims") made or brought against You by a third party alleging that the use of the Services, Platform, Partner Portal, or the Platform API, as contemplated hereunder, or any content originating with Us and published by Us on the Partner Exchange, infringes, misappropriates or violates any intellectual property rights of such third party (an "ASC Claim") and We shall indemnify and hold You harmless from and against any settlements agreed to in writing by Us and/or any damages, expenses or costs awarded by a court of competent jurisdiction against You to such third party in any ASC Claim; provided, that You (a) promptly give written notice of the ASC Claim to Us; (b) give Us sole control of the defense and settlement of the ASC Claim (provided that We may not settle any ASC Claim unless it unconditionally releases You of all liability); and (c) provide to Us, at Our cost, all reasonable assistance.

#### **16.2 Indemnification by You.**

Subject to this Agreement, You shall defend Us and Our affiliated companies and Our and their directors, officers, employees and agents (collectively the "ASC Indemnitees") against any Claims made or brought against any of the ASC Indemnitees by a third party alleging (i) that any data entered by You into the Services or Partner Portal, or Your use of the Services or Partner Portal in violation of this Agreement, or Your products or services, including Your Applications or Consulting Services Listing



listed on the Partner Exchange, infringes, misappropriates or violates any intellectual property rights of, or has otherwise violated applicable law with respect to, a third party, (ii) Your breach of any representation, warranty, or agreement relating to Your products and services, including Your Application or Consulting Services Listing listed on the Partner Exchange; (iii) Your breach of Section 7 (Our Customer Data and Your customer Configuration/Usage Data) of Addendum A attached hereto, and (iv) Your breach of this Agreement (collectively, items (i) to (iii) hereinafter referred to as “Partner Claims”) and You shall indemnify and hold the ASC Indemnitees harmless from and against any settlements agreed to in writing by You and/or any damages, expenses or costs awarded by a court of competent jurisdiction against any of the ASC Indemnitees in any Partner Claim; provided, that We (a) promptly give You written notice of the Partner Claim; (b) give You sole control of the defense and settlement of the Partner Claim (provided that You may not settle any Partner Claim unless it unconditionally releases Us of all liability); and (c) provide to You, at Your cost, all reasonable assistance.

You shall indemnify and hold the ASC Indemnitees harmless from and against any damages, losses or costs, including but not limited to attorney fees, fines, or other costs, such as costs related to the defense of any proceeding that is terminated by settlement, judgment, order or conviction, or upon a plea of nolo contendere or its equivalent, arising from or in connection with any inaccurate or misleading representations, warranties and covenants in Section 4 -Compliance with Applicable Laws of this Agreement. Such obligation shall continue after the expiration or termination of this Agreement.

## **17. COOPERATION ON DISPUTES**

You shall cooperate with Us in regard to any inquiry, dispute or controversy in which We may become involved and of which You may have knowledge. Such cooperation shall include disclosure of relevant documents and financial information, and interviews of Your personnel. Such obligation shall continue after the expiration or termination of this Agreement.

## **18. AUDIT RIGHTS**

We shall be allowed reasonable access to Your books, records and other documentation related to this Agreement or Your work with Us, and shall have the right to audit You on a periodic basis.

## **19. ENTIRE AGREEMENT**

You agree that this Agreement and the information which is incorporated into this Agreement by written reference (including reference to information contained in an URL or referenced policy herein), together with any applicable additional written terms posted on the Program Site related to Our Property or any applicable Order Form for the purchase of certain Program Benefits, or any addendums attached hereto, constitutes the complete Agreement between the parties governing Your membership in the Program and this Agreement shall supersede all prior or contemporaneous Agreements or representations, written or oral, regarding the subject matter herein and Your membership in the Program. If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any addendum or exhibit hereto, the terms of such addendum or exhibit shall prevail. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any Order Form, the terms of the Order Form shall prevail only with respect to payment terms, pricing and Program Benefit specific terms. It is expressly agreed that the terms of the body of this Agreement and any Order Form or addendum hereto shall supersede the terms in any purchase order or other ordering documents and no terms included in any such purchase order or other ordering documents shall apply to the Program, Services or to any products and/or services ordered. This Agreement and any Order Form You enter into with Us may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online through the Partner Portal by authorized representatives of You and Us.

## **20. ASSIGNMENT**

Neither You nor We may assign any rights or obligations under this Agreement without the prior written consent of the other (not to be unreasonably withheld or delayed), provided either You or We may assign this Agreement without consent of the other in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of the assigning party's assets. Any purported assignment in violation of this section shall be void.

## **21. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION**

### **21.1 General.**

Who You are contracting with under this Agreement, who You should direct notices to under this Agreement, what law will



apply in any lawsuit arising out of or in connection with this Agreement, and which courts can adjudicate any such lawsuit, depend on where You are domiciled.

<b>If You are domiciled in:</b>	<b>You are contracting with:</b>	<b>Notices should be addressed to: **</b>	<b>The governing law is:</b>	<b>The courts having exclusive jurisdiction are</b>
The United States of America	ASC Networks USA Inc., a Delaware corporation	Attn: VP Sales 15 British American Blvd., Latham, New York 12110 USA	New York and controlling United States federal law	New York City, New York, U.S.A
All Countries other than United States of America	ASC Networks Inc., a Canadian corporation	Attn: VP Sales 235 Terence Matthews Crescent, Ottawa, Ontario, K2M 2B3 Canada	Ontario and controlling Canadian federal law	Ottawa, Ontario, Canada

\*\* with copy to: Mediagrif Interactive Technologies Inc.  
1111 St-Charles Street West  
Suite 255  
Longueuil, Quebec J4K 5G4 Canada

### **21.2 Manner of Giving Notice.**

Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to You shall be addressed to the contact designated by You for Your relevant partner account, and in the case of billing-related notices, to the relevant billing contact designated by You. Notices to Us shall be addressed to the entity You are contracting with, as described above, and to the attention of the Partner Program Manager with a copy sent to Our General Counsel.

### **21.3 Agreement to Governing Law and Jurisdiction.**

Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

### **21.4 Waiver of Jury Trial.**

Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.





IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives identified below.

**Acknowledged and Agreed to:**

	<b>ASC Networks Inc.</b>
Signature	Signature
Name	Name
Title	Title
Date	Date

## **ADDENDUM A**

### **Partner Exchange Partner Program Benefit**

In addition to the terms in the body of the Agreement, this Addendum A of the Agreement shall apply to, and govern, all of Your Applications and Consulting Services Listing, You submit to Us for listing on the Partner Exchange. Your Program Level designation and Program Type will determine if You are entitled to certain Partner Exchange Program Benefits as a result of Your enrolment in the Program.

#### **1. Partner Exchange Program Benefit**

##### **A. Overview.**

You are responsible for evaluating and testing Your Application as to its technology, functionality, performance, security, and user interface before Your Application can be submitted to Us for review and listed on the Partner Exchange. We reserve the right to conduct any type of review of Your Applications or Consulting Services Listing. We may adopt and change our Partner Exchange review standards and processes in our sole discretion. All submissions of Your Applications, or Consulting Services Listing, to us for review or listing on the Partner Exchange must be made through our online package submission process. You acknowledge that You are solely responsible for, and that We have no responsibility or liability of any kind for, the development, installation, operation, or maintenance of Your Applications. You further represent that You shall be solely responsible for the accuracy, legality, and appropriateness of any content or information You submit to, or make available through, the Partner Exchange. We reserve the right, in Our sole discretion and for any reason at any time, to refuse to list Your Application or Consulting Services Listing on, or to remove any of Your Applications or Consulting Services Listing from, the Partner Exchange.

By using the Partner Exchange to list Your Application You agree that You will (1) ensure all user documentation relating to Your Application accurately reflects its functionality, including detailed security controls and safeguards relating thereto, (2) ensure Your user documentation accurately describes the architecture of Your Application, including to what extent functionality resides within and outside of the Platform, (3) maintain at all times a current privacy statement available on Your website which details Your collection, processing and handling of Your customer data, including identifiable personal information relating to Your Application users and (4) maintain current and accurate user documentation for Your Application on the Partner Exchange. You shall promptly notify Us and all users of Your Application in writing prior to making any update to Your Application user documentation, or Your privacy policy and prior to making any material change to Your Application architecture in a production system.

##### **B. Your Application Security Review.**

We may also conduct a security evaluation of Your Application, which may include a qualitative assessment involving a review of Your completed questionnaire, an interview with You, and/or security testing. If Your Application is a hosted, on-demand application, security testing may include remote application-level security testing of Your Application, and network-level security testing including a vulnerability threat assessment. We may conduct such testing ourselves or through a third party. We will provide reasonable notice to You before starting such testing. We will also cooperate reasonably with You to minimize the effects of such testing on Your business and operations, including by conducting network-level testing after business hours if You so request. You agree to cooperate reasonably in any such testing. **Despite the foregoing, such testing may in rare cases cause downtime or other adverse effects on Your applications or systems. You agree that We and Our agents or contractors conducting the testing will bear no responsibility for such adverse effects.** Any of Your nonpublic information to which We obtain access in the course of such security testing will be considered Your Confidential Information for purposes of the confidentiality provisions in the Agreement.

##### **C. Consulting Services Listing.**

If You submit for listing a Consulting Services Listing to the Partner Exchange You consent that We may do the following with respect to such listing: (a) publish on the Partner Exchange the results of customer satisfaction surveys relating to the performance of consulting engagements You have submitted to Us via the Partner Portal with such results to be generally compiled and conveyed in the form of an average numerical overall customer rating of Your services, and (b) publish the total number of Our certified consultants working on behalf of Your company. Such certification status shall relate to Your representatives who have completed and successfully passed Our certification training exams on the Application. The number of "certified" representatives will generally be posted and conveyed in the form of an overall numerical score.

#### D. Platform API Token.

If We permit publication of Your Application listing, We will provide You a Platform API token, which will be assigned to and may be used only by that particular application to access the Platform API. You may not otherwise disclose or expose the Platform API token to Your Application users or third parties.

#### 2. Platform API Previews

We will use commercially reasonable efforts to provide You access to upcoming updates of the Platform API before they are made generally available. You will conduct regression tests of each of Your Applications against any such upgraded Platform API during any such early access period and promptly notify Us of any issues encountered.

#### 3. Reviews of Partner Exchange Applications by You

The Partner Exchange allows You to post reviews of Partner Exchange Applications. Any review by You of a Partner Exchange Application shall be made in good faith after reasonable evaluation of the full Partner Exchange Application. If You post a review of Your Application, You shall disclose Your identity and the fact that the Partner Exchange Application being reviewed is Your Application. If You post a review of a competitor's Partner Exchange Application, You shall disclose Your identity and the fact that You publish a competitive Partner Exchange Application.

#### 4. Service Levels

##### 4.1 Availability of Your Applications.

To the extent Your Applications are not developed and operated on the Platform, You shall use commercially reasonable efforts to make Your Applications available 99% of the time, except as provided below. Availability will be calculated per calendar quarter, as follows:

$$\left[ \left( \frac{\text{total} - \text{nonexcluded} - \text{excluded}}{\text{total} - \text{excluded}} \right) * 100 \right] \geq 99\%$$

Where:

- a) total means the total number of minutes for the quarter
- b) nonexcluded means downtime that is not excluded
- c) excluded means the following:
  - i. Any planned downtime of which You give 24 hours or more notice to Your customers. Except in urgent circumstances (such as, for example, a security threat or imminent or actual system failure), You will schedule all planned downtime during the weekend hours from 9:00 p.m. Friday, Pacific Time, through 3:00 a.m. Monday, Eastern Time.
  - ii. Any unavailability caused by Us (e.g., by the Platform or Platform API).
  - iii. Any unavailability caused by circumstances beyond Your reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Your employees).

##### 4.2 Customer Support.

You will use commercially reasonable efforts to:

- a) provide telephone, web-based and email support to Your customers for Your Applications during normal business hours;
- b) respond to all customer support queries regarding Your Applications within one business day; and
- c) provide a clear statement of Your support offering for Your Applications, to be included in all of Your Application listings on the Partner Exchange.

#### 5. Licensing Your Applications to Users

You may offer Your Applications via the Partner Exchange for free or for a fee, under Your own license terms or under the default Partner Exchange free license terms set forth at the end of this Addendum A as Section 8. To offer Your Applications under Your own license terms, You shall submit such license terms to Us through the online process described in the Program



Policies describing the Partner Exchange Program Benefit. You may update such license terms from time to time using the same process. If You do not submit Your license terms to Us through such online process, Your Applications will be offered under the default Partner Exchange free license terms. Your Application license terms shall not make any representations about, or purport to bind, Us.

## **6. Risk of Infringement of Intellectual Property Rights**

You acknowledge the risk that Users who access Your Applications through the Partner Exchange, including through the pre-purchase "Test Drive" (or similarly functional) feature of the Partner Exchange, may develop applications that infringe or misappropriate Your intellectual property rights in Your Applications. Nothing in this Agreement restricts You from pursuing claims against such Users. However, in that event, You agree that Our provision of the Partner Exchange does not constitute contributory infringement or aiding or abetting of any such infringement or misappropriation.

## **7. Our Customer Data and Your Customer Configuration/Usage Data**

### **7.1 Our Customer Data.**

"Our Customer Data" means electronic data or information submitted by Our customers into Our system. To the extent Your Applications transmit Our Customer Data outside Our system, You represent and warrant that You have notified all users who have access to Our Customer Data through Your Applications, or will notify them prior to their use of Your Applications, that their data will be transmitted outside Our system and to that extent We are not responsible for the privacy, security or integrity of such data. You further represent and warrant that to the extent Your Applications store, process or transmit Our Customer Data, neither You nor Your Applications will, without appropriate prior user consent or except to the extent required by applicable law, (1) modify the content of Our Customer Data in a manner that adversely affects the integrity of Our Customer Data, (2) disclose Our Customer Data to any third party, or (3) use Our Customer Data for any purpose other than providing Your Application functionality to users of Your Applications. You shall also maintain and handle all of Our Customer Data in accordance with privacy and security measures reasonably adequate to preserve its confidentiality and security and all applicable privacy laws and regulations. A modification or disclosure of Our Customer Data does not violate either of the two preceding sentences to the extent it results from an activity of the applicable customer using Your Application and a reasonable customer would expect that modification or disclosure of its data to occur as a result of that activity.

### **7.2 Your Customer Configuration/Usage Data.**

"Your Customer Configuration/Usage Data" means information stored in our systems about Your customers' configuration and usage of Your Applications. To the extent You receive access to Your Customer Configuration/Usage Data in or from Our systems, You represent and warrant that You have notified all of Your users who are subjects of Your Customer Configuration/Usage Data, or will notify them prior to their use of Your Applications, that You may receive such data from Us, and to that extent We are not responsible for the privacy, security or integrity of Your Customer Configuration/Usage Data. You further represent and warrant that to the extent You or Your Applications store, process, collect or transmit Your Customer Configuration/Usage Data, neither You nor Your Applications will, without appropriate prior user consent or except to the extent required by applicable law, (1) modify the content of Your Customer Configuration/Usage Data in a manner that makes it inaccurate or misleading, (2) disclose Your Customer Configuration/Usage Data to any third party other than Your applicable customer, or (3) use Your Customer Configuration/Usage Data except in connection with Your relationship with Your applicable customer. You shall also maintain and handle all of Your Customer Configuration/Usage Data in accordance with privacy and security measures reasonably adequate to preserve its confidentiality and security and all applicable privacy laws and regulations. Notwithstanding the foregoing, this paragraph does not restrict Your use or disclosure of aggregated data containing Your Customer Configuration/Usage Data, provided none of Our customers is identified or identifiable through such aggregated data or through Your use of such aggregated data.

## **8. Default Partner Exchange Free License Terms**

The following language shall constitute the Partner Exchange free default license terms referenced under Section 5 (Licensing Your Application to Users) above:

THIS APPLICATION IS PROVIDED BY THE COPYRIGHT HOLDERS AND DISTRIBUTORS "AS IS" AND ANY EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED. IN NO EVENT SHALL THE COPYRIGHT OWNERS OR DISTRIBUTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL,



EXEMPLARY, CONSEQUENTIAL OR SIMILAR DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OPPORTUNITY, REVENUE, SAVINGS OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS APPLICATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. SUBJECT TO THE FOREGOING, THIS APPLICATION MAY BE FREELY REPRODUCED, DISTRIBUTED, TRANSMITTED, USED, MODIFIED, BUILT UPON, OR OTHERWISE EXPLOITED BY OR ON BEHALF OF ASC OR ITS AFFILIATES, ANY CUSTOMER OR PARTNER OF ASC OR ITS AFFILIATES, OR ANY DEVELOPER OF APPLICATIONS THAT INTERFACE WITH THE ASC APPLICATION, FOR ANY PURPOSE, COMMERCIAL OR NON-COMMERCIAL, RELATED TO USE OF THE ASC APPLICATION, AND IN ANY WAY, INCLUDING BY METHODS THAT HAVE NOT YET BEEN INVENTED OR CONCEIVED.