Master Services Agreement

NetStandard, Inc. and [Customer legal name]

This Master Services Agreement ("Agreement") is made Date of Signature ("Effective Date") between NetStandard, Inc. ("NSI" or "Company"), with a principal office at 10300 W 103rd Street, Overland Park, KS 66214, and [Customer legal name] ("Customer") with a principal office at [Street address, City, ST ZIP]. Company and Customer are sometimes referred to individually in this Agreement as a "Party" and are collectively referred to as the "Parties".

WHEREAS, Company is engaged in the business of providing a range of information technology services; and

WHEREAS, Customer desires to retain Company to perform information technology services and functions; and

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the Parties have agreed and do agree as follows:

AGREEMENT

1. Definitions. Any capitalized term which is defined in this Agreement shall have the same meaning when used in any Service Attachment, Statement of Work, or Product Order, unless the language or context requires otherwise. SOW-specific definitions, if any, shall be included in the applicable SOW, and shall apply only with respect to such SOW. As used in this Agreement:

(a) "Confidential Information" means any information furnished by Discloser to Recipient during the term of this Agreement, including, without limitation, pricing, methods, processes, financial data, lists, statistics, software, systems or equipment, programs, research, development, strategic plans, operating data, or related information of each of the parties and/or its or their customers and suppliers, concerning past, present, or future business activities of said entities. The pricing, fees and other commercial terms set forth in any Service Attachment, Statement of Work or Product Order are the Confidential Information of Company. All other Confidential Information must be clearly designated as "Confidential." Information provided orally will be considered confidential only if a written memorandum of such information clearly designated as marked "Confidential" is delivered to Recipient within thirty (30) days of the Disclosure. As to any particular Confidential Information, "Discloser" means the Party disclosing the Confidential Information and the "Recipient" means the Party receiving the Confidential Information.

(b) "Content" means information, software, Customer Data, and other data including, without limitation, HTML files, scripts, programs, recordings, sound, music, graphics, and images that Customer or any of its Users create, install, upload or transfer in or through a Customer device or Customer's network.

(c) "Customer Components" means the hardware, software, other products, and other Content including, without limitation, those specified in a SOW as being provided by Customer.

(d) "Customer Data" means all data and information about Customer's business(es), customers, employees, operations, facilities, products, markets, assets or finances that Company obtains, creates, generates, collects or processes in connection with its performance of Services and is stored in any Customer device or on the Customer network.

(e) "Disclosure" means the release, publication, or dissemination of Confidential Information by a Party and excludes the release, publication, or dissemination of Confidential Information by a third party.

(f) "Hosting Services" means the services delivered by Company under this agreement consisting of, but not limited to, network, storage and server devices, software programs, applications network management devices, and other items specified in a Statement of Work. Hosting Services are governed by this Master Services Agreement and Addendum A, "Terms Specific to Hosting Services Only" attached hereto and incorporated herein by reference.

(g) "Required Consents" means any consents, licenses, or approvals required to give Company, or any person or entity acting for Company under this Agreement, the right or license to access, use and/or modify in electronic form and in other forms, including, without limitation, derivative works, the Customer Components and Content, without infringing the ownership or intellectual property rights of the providers, Company, or owners of such Customer Components and Content.

(h) "Third Party Services" means the information technology services to be delivered by a third party under this Agreement as specified in any Statement of Work.

(i) "User" means any entity or individual that receives or uses the Services, or the results or products of the Services, through Customer.

2. Contracted Services. This Agreement shall apply to the delivery of information technology services, support, functions and/or products as further described in one or more Service Attachment(s), Statement(s) of Work or Product Order(s) that may be proposed and approved in writing by the Parties. Any such approved Service Attachment(s), Statement(s) of Work or Product Order(s) shall be attached hereto and incorporated herein by reference (the services and functions described in any Service Attachment and/or Statement of Work shall be referred to as the "Services;" the products described in any Product Order shall be referred to as the "Products"). Each Service Attachment, Statement of Work, and Product Order shall be signed by both Parties and will be deemed to incorporate all of the provisions of this Agreement by reference. Further, each Service Attachment, Statement of Work, and Product Order will be a separate agreement between Company and Customer. Absent the execution of a Service Attachment, Statement of Work or Product Order, this Agreement does not, in and of itself, represent a commitment by Company to provide any Services or Products to Customer or a requirement that Customer pay any fees to Company.

3. Term of Agreement

(a) This Agreement shall commence on the Effective Date set forth above and will continue in full force and effect until terminated by either Party as provided herein, or until Company is no longer obligated to provide any Services or Products to Customer pursuant to an attached

Service Attachment, Statement of Work or Product Order. In the event that a Service Attachment provides for a different term, the Service Attachment term will control for that specific Service Attachment only.

(b) Either Party may terminate this Agreement for convenience at any time upon written notice to the other Party. If there are any pending Service Attachments, Statements of Work or Product Orders, termination shall be effective upon the expiration or termination of the last transaction. If there are no pending Service Attachments, Statements of Work or Product Orders, termination shall be effective upon receipt of the written notice.

(c) The Agreement can be terminated for cause, as defined in paragraph 14(a) herein, at any time provided: (1) the alleged breaching Party is notified in writing and given an opportunity to cure the alleged breach in the manner set forth in paragraph 14(a) below; and (2) the alleged breach was not caused by a condition described in paragraph 18(c).

4. Fees and Payment Terms

(a) In exchange for the Services performed or Products delivered by Company, as set forth in any Service Attachment(s), Statement(s) of Work or Product Order(s), Customer agrees to compensate Company at the rates identified in the fee schedule set forth in the Service Attachment(s), Statement(s) of Work or Product Order(s). Customer shall also be responsible for payment of any applicable federal, state, or local sales or use taxes, or any other taxes or fees assessed on, or in connection with, any of the Services or Products provided pursuant to this Agreement. This provision shall not apply to any taxes for which Customer is exempt and for which Customer has furnished Company with a valid tax exemption certificate authorized by the appropriate taxing authority. Customer will pay all invoices within fifteen (15) days of receipt thereof. Customer agrees to pay a late payment charge at the rate of one and one-half percent (1.5%) per month, or at the maximum late payment charge permitted by applicable law, whichever is less, on any unpaid amount for each calendar month (or portion thereof) that any payment is thirty (30) days past due. In addition, if Customer's account remains unpaid for thirty (30) days or more past the due date, Company reserves the right to suspend all Services until all such overdue amounts (and any applicable interest charges, as specified above) are paid. In addition, Customer agrees to reimburse Company for all expenses incurred in connection with the collection of amounts payable hereunder, including court costs and reasonable attorneys' fees. All deliverables will be the property of Company until payment in full is received. Without limiting the foregoing, Customer's failure to remit payment due within fifteen (15) days of receipt of an invoice shall be considered a material breach of this Agreement subject to accelerated termination pursuant to paragraph 14(a) of this Agreement. Customer shall be responsible for reimbursing Company for any actual costs, including attorney's fees, related to resolving any unpaid balance.

(b) In addition, Customer shall reimburse Company its actual out-of-pocket expenses as reasonably incurred by Company in connection with the performance of Services or delivery of Products. Additional expenses for materials, services, training and hardware may only be incurred by Company and charged to Customer if prior written approval from Customer has been obtained.

5. Additional Products and Services

(a) Company shall use commercially reasonable efforts to perform the Services set forth in the Service Attachment(s) in accordance with the Service Level Agreements identified in the respective Service Attachment(s) and other terms and conditions of this Agreement and any attached Service Attachment(s).

(b) In the event a Party desires to make changes to Services provided pursuant to an existing Service Attachment, it shall notify the other Party in writing of its proposed changes. The Parties shall have five (5) days from the receipt of a change request to either accept or reject the proposed changes. If a Party accepts the proposed changes to a Service Attachment, it shall notify the other Party in writing of the acceptance, and the proposed changes shall automatically become an addendum to the affected Service Attachment. If such Party rejects the proposed changes, this Agreement and any attached Service Attachment shall remain unchanged.

(c) Customer acknowledges that Company may, from time to time and without notice, make nominal or incidental changes to the Services provided in order to conform to Customer's use of the Services.

6. Products. Company may from time to time, in connection with the provision of Services to Customer, offer certain Products for sale to Customer. This paragraph 6 shall set forth the terms and conditions for the purchase of any Products by Customer.

(a) Invoicing and Payment. Products will be invoiced to Customer upon Company's acceptance of a Product Order. Company's invoice will include all Products available at the time of order acceptance. Back-ordered items will be separately invoiced on the date shipped. Shipping, handling and insurance charges will be added to the invoice amount. If Customer has entered into an agreement for Services to be provided by Company, those Services will be separately invoiced to Customer. Payment is due fifteen (15) days from invoice date. In no event shall the due date of a Product invoice be extended on account of back-ordered items or status of Service completion. Company reserves the right to charge a late payment fee of one and one-half percent (1.5%) per month on all unpaid balances.

(b) Security Interest. Customer grants Company a security interest in the Products detailed in each Product Order, as security for payment in full. Customer authorizes Company to file and/or record any documents it deems necessary to perfect this security interest.

(c) Delivery. Shipping dates are approximate, and deliveries are subject to unavoidable delays. Company shall not be liable for damages caused by delay in delivery, installation or furnishing of Services.

(d) Returns. The purchase of Products may be canceled by Customer only upon written approval of Company and upon terms that indemnify Company against all losses related to such cancelation. In no event will Company provide return or warranty coverage beyond that provided by the manufacturer. If accepted, all returns must be accompanied by a Company assigned Return Merchandise Authorization (RMA) number. Customer must provide Company

with an invoice number and Product serial number when requesting an RMA number. No returns on memory after 15 days from date of invoice; no returns on other Products after 30 days from date of invoice. All returns subject to a 15% restocking fee. Returned Products must be in new and working condition in original package, including all manuals. Special ordered items will not be accepted for return. No returns on software or memory that has been opened. All returns are subject to the terms and conditions of the manufacturer's return policy.

(e) **Taxes.** Customer shall pay all applicable federal, state, and local sales, use, property, excise, or other taxes imposed on or with respect to the purchase price of the Products.

(f) **Risk of Loss.** All shipments of Products to Customer will be FOB point of shipment. Insurance coverage, freight charges, transportation costs, and all other expenses applicable to shipment to Customer's identified point of delivery will be the responsibility of Customer. Risk of loss will pass to Customer upon delivery of the Products to the common carrier (regardless of who pays such common carrier) or Customer's representative at the point of shipment.

(g) **Warranty Disclaimer.** Customer will not use the Products for use in life support, life sustaining, nuclear or other applications in which failure of such Products could reasonably be expected to result in personal injury, loss of life, or catastrophic property damage. Customer agrees that Company is not liable for any claim or damage arising from such use. CUSTOMER ACKNOWLEDGES THAT ANY PRODUCTS PURCHASED FROM COMPANY ARE SUBJECT ONLY TO THE MANUFACTURER'S ORIGINAL WARRANTY. ALL PRODUCTS ARE PURCHASED "AS IS" AND "WITH ALL FAULTS." SOFTWARE IS SUBJECT TO SUCH WARRANTIES AS THE MANUFACTURER MAY MAKE UNDER THE LICENSE AGREEMENT ACCOMPANYING SUCH SOFTWARE. IT IS THE RESPONSIBILITY OF THE CUSTOMER TO ENSURE THAT ALL ITS DATA FILES ARE ADEQUATELY DUPLICATED AND DOCUMENTED. COMPANY WILL NOT BE RESPONSIBLE FOR CUSTOMER'S FAILURE TO DO SO, NOR FOR THE COST OF RECONSTRUCTING DATA STORED ON FIXED DISKS, MAGNETIC TAPES, MEMORIES, OR ANY OTHER STORAGE MEDIA AND/OR DEVICES. COMPANY MAKES NO WARRANTY, EXPRESS OR IMPLIED, OF FITNESS FOR A PARTICULAR USE, NON-INFRINGEMENT, OR MERCHANTABILITY.

(h) NO MONETARY RECOVERY IS AVAILABLE FROM COMPANY FOR WARRANTY CLAIMS. IN ADDITION, IN NO EVENT WILL COMPANY'S LIABILITY TO CUSTOMER EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCT THAT IS THE BASIS FOR THE PARTICULAR CLAIM. COMPANY WILL NOT, IN ANY EVENT, BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOST OR DAMAGED DATA, AND LOSS OF BUSINESS OPPORTUNITY), HOWEVER CAUSED, ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT, OR IN ANY WAY CONNECTED TO THIS SECTION 6, EVEN IF COMPANY HAS BEEN ADVISED OF SUCH DAMAGES AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. THE FOREGOING LIMITATION OF LIABILITY WILL APPLY WHETHER ANY CLAIM IS BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE, INFRINGEMENT OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY, CONTRIBUTION, OR OTHERWISE.

7. **Protection of Rights.** Company retains all right, title, and interest in the Services and in all improvements, enhancements, modifications, or derivative works thereof including, without limitation, all rights to patent, copyright, trade secret, and trademark. The Services contain proprietary and confidential information that is protected by applicable intellectual property and other laws, and Customer agrees not to disclose such information to any third party without Company's prior permission.

   (a) Unless otherwise agreed in writing by the Parties, any hardware or software optionally purchased by Customer shall be the sole property of Customer. Customer agrees to be bound by all vendor-specific software licenses and/or end-user license agreements for all software modules sold, installed and/or managed by NSI. NSI is not responsible for any damages to Customer resulting from Customer's violation of or failure to comply with any vendor-specific licenses or end-user license agreements. Customer may not grant to any third party a sub-license, lease, or sub-lease of equipment, hardware, or software serviced by NSI without the express written consent of NSI.

   (b) NSI provides some of its Services under this Agreement via the Internet. Customer acknowledges that the Internet is not owned, operated, managed by, or in any way affiliated with NSI, but is instead a separate network of computers independent of NSI. Customer's use of the Internet is solely at Customer's own risk and is subject to all applicable local, state, national and international laws and regulations. Customer's ability to access the Internet or NSI Services via the Internet is beyond NSI's control. Unless agreed otherwise in writing by the Parties, Customer assumes all risk and responsibility for the content of information transferred across the Internet by Customer.

8. **Independent Contractor.** The Parties enter into this Agreement, including any attached Service Attachment(s), Statement(s) of Work or Product Orders, as independent contractors and nothing within this Agreement shall be construed to create a joint venture, partnership, agency, or other employment relationship between the Parties. All Company employees who are assigned to perform services at any Customer-owned or leased facility shall be considered to be an employee of Company only and will not be considered an agent or employee of Customer for any purpose. Company will be solely responsible for payment of all compensation owed to its employees, including all applicable federal, state and local employment taxes and will make deductions for all taxes and withholdings required by law. In no event will any Company employee be eligible for or entitled to any benefits of Customer.

9. **Confidential Information**

   (a) Restrictions on Use; Non-Disclosure. Recipient agrees that it will use the same care and discretion to avoid Disclosure of any Confidential Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate (but in no event less than a reasonable degree of care). Except as otherwise expressly permitted in writing by an authorized representative of Discloser, Recipient agrees that it will not: (a) use the Confidential Information of Discloser for any purpose other than the purpose for which Discloser disclosed the information; or (b) disclose or reveal Confidential Information of Discloser to any person or

entity other than its employees, directors, officers, agents and consultants who (i) have a need to know to further the purpose of this Agreement; and (ii) are subject to legally binding obligations of confidentiality no less restrictive than those contained in this Agreement.

(b) Exceptions. The obligations set forth in Section 9(a) shall not apply to Confidential Information that: (a) before the time of its Disclosure was already in the lawful possession of the Recipient; or (b) at the time of its Disclosure to Recipient is available to the general public or after Disclosure to Recipient by Discloser becomes available to the general public through no wrongful act of the Recipient; or (c) Recipient demonstrates to have been lawfully and independently developed by Recipient without the use of or reliance upon any Confidential Information of the Discloser and without any breach of this Agreement.

(c) Disclosures Required by Law. If Recipient becomes legally compelled (by deposition, interrogatory, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, then Recipient shall notify Discloser of the requirement promptly in writing so that Discloser may seek a protective order or other appropriate remedy. If a protective order or other remedy is not obtained, or if Discloser waives in writing compliance with the terms hereof, then Recipient shall furnish only that portion of the information which Recipient is advised by written opinion of counsel is legally required and to exercise reasonable efforts to obtain confidential treatment of such information.

(d) Disposal of Confidential Information. Upon termination of this Agreement or upon Discloser's request at any time, Recipient agrees to promptly return to Discloser all copies of Confidential Information. If return is impossible as to any portion of the Confidential Information, then Recipient shall certify to Discloser promptly that all such Confidential Information of Discloser, including all copies thereof, has been totally and permanently destroyed. Company will return to the Customer, all Customer Data in its possession at the date of termination in its then-existing format and on its Customer-supplied media, however, Company may keep a copy in accordance with its record retention policy. Any conversion of format or media performed by Company in order to discharge its obligations under this Section shall be at Customer's expense.

(e) Remedies. The Parties acknowledge and agree that a breach of this Agreement by either Party will cause continuing and irreparable injury to the other's business as a direct result of any such violation, for which the remedies at law will be inadequate, and that Discloser shall therefore be entitled, in the event of any actual or threatened violation of this Agreement by Recipient, and in addition to any other remedies available to it, to seek to obtain a temporary restraining order and to injunctive relief against the other Party to prevent any violations thereof, and to any other appropriate equitable relief.

(f) Duration. The obligations set forth in this Section 9 shall apply during the term of this Agreement and for a period of one (1) year thereafter.

10. Non-solicitation

(a) **Non-solicitation of Personnel.** Neither Party may, either directly or indirectly, solicit, hire, contract with or endeavor to entice away any employee of the other Party during the Term of

this Agreement and for a one (1) year period following its termination (the "Non-solicitation Term"). If a Party breaches this section, such Party shall pay the other as liquidated damages and not a penalty an amount equal to 100% of the subject employee's annual fair market salary, as determined by the non-breaching Party. This provision is considered a material term that allows for accelerated termination rights under paragraph 14 of this Agreement.

11. Warranty.

(a) By Each Party. Each Party represents and warrants to the other Party that: (a) it has full power and authority to enter into this Agreement; (b) it is in compliance, and will continue to comply during the term of this Agreement, with all laws and regulations governing its possession and use of Customer Data and its provision or use of the Services; and (c) it has the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement.

(b) By Customer. Customer represents and warrants to Company that: (a) it owns, or is a licensee of, having the right to sublicense, the Content and that Customer has the right to grant Company the rights that Customer purports to grant in this Agreement; (b) Company's possession or use of the Content or Customer Data does not and will not infringe on, violate, or misappropriate any patent, trademark, or copyright, or misappropriate any trade secret or other proprietary right of any third party; and (c) it will not use, nor will it allow any third parties under its control to use, the Services for high risk activities, such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.

(c) By Company. Company represents and warrants to Customer that the Services shall be performed in a good, workmanlike, professional and conscientious manner by experienced and qualified employees of Company according to the generally accepted standards of the industry to which the Services pertain. For Services containing a deliverable, such Services will be deemed accepted by Customer if not rejected in a reasonably detailed writing within five (5) days of submission to Customer, or as otherwise identified in the applicable Statement of Work. In the event the Services provided by Company are not in conformance with this warranty, Customer must provide written notice to Company within five (5) days after the performance of the Services and such notice will specify in reasonable detail the nature of the breach. Upon confirmation of the breach, Company will use commercially reasonable efforts to take the steps necessary to correct the deficiency at no charge to Customer. This is Customer's sole and exclusive remedy for breach of this warranty.

(d) Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, NEITHER PARTY MAKES ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM THE USAGE OF TRADE OR COURSE OF PERFORMANCE. NO EMPLOYEE, AGENT OR REPRESENTATIVE OF COMPANY IS AUTHORIZED TO MAKE ANY ADDITIONAL OR OTHER REPRESENTATIONS OR WARRANTIES ON BEHALF OF COMPANY.

CUSTOMER IS NOT RELYING ON ANY OTHER REPRESENTATIONS OR WARRANTIES. IN ADDITION, CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT THE INTERNET IS NOT A SECURE MEDIUM, MAY BE INHERENTLY UNRELIABLE AND SUBJECT TO INTERRUPTION OR DISRUPTION AND MAY BE SUBJECT TO INADVERTENT OR DELIBERATE BREACHES OF SECURITY, FOR WHICH COMPANY CANNOT BE HELD LIABLE.

12. Limitation of Liability.

(a) Limit on Types of Damages Recoverable. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL (AND COMPANY'S SUPPLIERS AND LICENSORS WILL NOT) BE LIABLE TO THE OTHER PARTY OR ANY OTHER THIRD PARTY CLAIMING THROUGH A PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOST OR DAMAGED DATA, INVESTMENTS MADE, AND LOSS OF BUSINESS OPPORTUNITY OR INTERRUPTION) THAT THE OTHER PARTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH THIS AGREEMENT, ANY SOW, OR THE SERVICES, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, TORT, STRICT LIABILITY AND NEGLIGENCE), EVEN IF (A) SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (B) DIRECT DAMAGES DO NOT SATISFY A REMEDY, OR (C) A LIMITED REMEDY SET FORTH IN THIS AGREEMENT OR ANY SOW FAILS OF ITS ESSENTIAL PURPOSE.

(b) Limit on the Amount of Damages Recoverable. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY'S TOTAL CUMULATIVE LIABILITY UNDER OR RELATING TO THIS AGREEMENT AND THE SERVICES, REGARDLESS OF THE NATURE OF THE OBLIGATION, FORM OF ACTION OR THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, STRICT LIABILITY, AND NEGLIGENCE), SHALL BE LIMITED IN ALL CASES TO AN AMOUNT WHICH SHALL NOT EXCEED, IN THE AGGREGATE, FEES PAID BY CUSTOMER TO COMPANY DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY FOR THE SERVICES THAT ARE THE BASIS OF THE PARTICULAR CLAIM AND UNDER THE APPLICABLE SOW.

(c) Non-Managed Systems. Company shall not be liable for any damages caused by services, systems, software, or other components that neither it nor its employees, agents or subcontractors furnish or manage pursuant to this Agreement.

(d) Applicability. The terms in this Section 12 shall apply to the maximum extent permitted by applicable law. If applicable law precludes a party from excluding liability for certain types of damages for certain acts or omissions or capping its liability for certain acts or omissions, then the terms in this Section 12 shall apply to not limit liability for such acts and omissions, but will apply for all other acts and omissions.

(e) Allocation of Risk. EACH PARTY ACKNOWLEDGES THAT THE FOREGOING DAMAGES EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 12 REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND ACKNOWLEDGES THAT THE OTHER PARTY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT ABSENT SUCH EXCLUSIONS AND LIMITATIONS OF LIABILITY OR THAT THE PRICES PAID BY CUSTOMER FOR THE SERVICES WOULD HAVE BEEN HIGHER.

13. Indemnification.

(a) **Indemnification** by Company. Subject to the terms and conditions in this Agreement, Company will, at its cost, (i) defend Customer and its officers, directors, shareholders, employees, agents, successors and assigns (collectively the "Customer Indemnified Parties") from and against any claim, suit, action, or proceeding (threatened or otherwise) (each a "Claim") made or brought by a third party against Customer Indemnified Parties to the extent based upon (a) any breach by Company of any of its representations and warranties under Section 11(a); (b) real property damage or personal injury, including death, solely and directly caused by Company's employees or contractors in the course of performance under this Agreement; (c) any breach by Company of Section 9 but only with respect to the Disclosure of Confidential Information and to the extent the Disclosure is the result of actions predominantly attributable to Company; and (d) any allegation that Customer's receipt of the Services under this Agreement infringes any of such third party's copyrights, or any such third party's patents issued in the United States as of the Effective Date, or misappropriates any of such third party's trade secrets (each an "IP Claim"); and (ii) Company shall pay any final award of damages (or settlement amount approved by Company in writing) paid to the third party that brought any such Claim.

(b) **Indemnification** by Customer. Customer will indemnify, defend and hold harmless Company and its officers, directors, shareholders, employees, agents, successors and assigns from any and all liabilities, damages, costs and expenses, including reasonable attorney's fees and expenses, arising out of any claim, suit or proceeding (threatened or otherwise) made or brought by a third party against Company or its officers, directors, shareholders, employees, agents, successors and assigns based upon (a) any breach by Customer of any of its representations and warranties under Section 11; (b) real property damage or personal injury, including death, directly caused by Customer; (c) any breach by Customer of Section 9 but only with respect to the Disclosure of Confidential Information and to the extent the Disclosure is the result of actions predominantly attributable to Customer; (d) any breach by Customer of its obligations under Sections 15, 17(b), or 17(f); and (e) any claim that Company's possession, storage, or transmission of the Content or possession or use of the Customer Components, infringes on, violates, or misappropriates any patent, copyright, trademark, service mark, trade secret or other intellectual property or proprietary rights of such third party.

(c) Procedure. A Party (or other person) having a right to defense and indemnification under this Agreement ("Indemnified Party") that desires such indemnification shall tender to the Party having an obligation to defend and indemnify under this Agreement ("Indemnifying Party") sole control of the defense and settlement of the Claim for which indemnity is sought, provided that the Indemnified Party shall notify the Indemnifying Party promptly in writing of each Claim and the Indemnified Party shall give the Indemnifying Party information and assistance to defend and settle the Claim. The Indemnified Party, at its own expense, shall have the right to employ its own counsel and to participate in any manner in the defense against any claim for which indemnification is sought under this Section 13. The Indemnified Party shall cooperate in all reasonable respects with the Indemnifying Party and its attorneys in the investigation, trial and defense of any Claim. In no event shall either Party make any settlement of a Claim, including

without limitation, any settlement that involves a remedy relating to admission of liability by, injunctive relief against, or other affirmative obligations by the Indemnified Party without the other Party's prior written consent, which consent will not be unreasonably withheld, delayed, or conditioned.

(d) Mitigation for IP Claims. At any time after notice of an IP Claim, or if Company believes there is a basis for an IP Claim, Company has the right, at Company's sole option and expense, to either (a) procure the right for Customer to continue receiving the Services as provided in this Agreement, or (b) replace or modify the applicable Service with a service that has substantially similar functionality and that Company believes would not be subject to the IP Claim. If Company deems (a) or (b) not feasible or not commercially reasonable, Company has the right to terminate the applicable SOW. In the event of any such termination, Company will refund to Customer the unused portion of any amounts paid by Customer for the affected Service. In addition, upon any such termination, Customer shall cease the use of the applicable Service.

(e) Limitations as to IP Claims. Notwithstanding anything to the contrary, Company shall have no obligations or liability under Section 13(a) (Indemnification by Company) if the IP Claim is based upon, arises out of, or is related to, in whole or in part, or if any of the following apply: (a) the combination of the applicable Service with any product, software, solution, or service not entirely developed and provided by Company, (b) use of the applicable Service outside the scope of the licenses or rights set forth in this Agreement or in violation of any law or any restriction or limitation set forth in this Agreement, (c) Customer's failure to comply with Company's direction to cease any activity that in Company's reasonable judgment may result in an IP Claim, (d) any allegation by a third party that does not specifically reference a Company Service, or that does not reference a feature or function of a Company Service, or (e) any IP Claim for which Customer does not promptly tender control of the defense thereof to Company.

(f) Sole Remedy. THE TERMS IN THIS SECTION 13 (INDEMNIFICATION) SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND COMPANY'S SOLE AND EXCLUSIVE LIABILITY AND OBLIGATION WITH RESPECT TO THIRD PARTY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 13 (INDEMNIFICATION), COMPANY SHALL NOT HAVE ANY OBLIGATION TO DEFEND OR INDEMNIFY CUSTOMER FOR THIRD PARTY CLAIMS.

14. Termination

(a) **Termination for Material Breach.** If either Party believes that the other Party has failed in any material respect to perform its obligations under this Agreement (including any Service Attachment(s), Statement of Work, or Product Order attached hereto), then the non-breaching Party shall provide written notice to the other Party's representative identified in Exhibit 1 attached hereto describing the alleged breach in reasonable detail. If the alleged breach relates to Customer's failure to pay any sum due and owing under this Agreement, Customer shall have ten (10) business days after notice of such failure to cure the breach. If Customer fails to cure the breach within ten (10) business days, then Company may immediately terminate this Agreement, in whole or in part, for cause, by providing written notice to Customer. With respect

to all other breaches of this Agreement, the non-breaching Party must provide the breaching party notice in writing clearly identifying the breach. Unless the Parties agree in writing to a longer time, the breaching Party shall have fifteen (15) days from its receipt of the written notice of breach to cure the breach. If the breaching Party fails to cure the breach within fifteen (15) days of receipt of the written notice of breach, then the non-breaching Party may terminate this Agreement, in whole or in part, for cause by providing written notice to the authorized contact identified in Exhibit 1 attached hereto and fully incorporated herein. If the breach is one that cannot reasonably be cured within fifteen (15) days of receiving notice, the parties shall mutually agree in writing to a time schedule and plan for curing the breach. If the breach is not cured by the mutually agreed-upon deadline, the non-breaching Party may terminate this Agreement, in whole or in part, for cause by providing written notice to the authorized contact identified in Exhibit 1 to this Agreement.

(b) **Termination of Individual Services.** If Customer is receiving Services under multiple Service Attachments, the Termination of one Service Attachment does not affect any other Service Attachment or this Agreement. If Company terminates any Service Attachment due to Customer's material breach, Customer shall not be relieved of its obligation to remit payment for any unpaid, undisputed balance, or compensate Company its actual costs incurred as a result of Company's reasonable reliance upon Customer's promise to honor its obligations under the Service Attachment.

(c) **Termination for Bankruptcy.** Company shall have the immediate right to terminate this Agreement, by providing written notice to Customer, in the event that (i) Customer becomes insolvent, enters into receivership, is the subject of a voluntary or involuntary bankruptcy proceeding, or makes an assignment for the benefit of creditors; or (ii) a substantial part of Customer's property becomes subject to any levy, seizure, assignment or sale for or by any creditor or government agency.

(d) **Payments Due.** The termination of this Agreement shall not release Customer from the obligation to make payment of all amounts then or thereafter due and payable.

(e) **License Fees.** Upon termination of this Agreement or any Service Attachment for any reason, Customer shall be responsible for the unpaid balance of any license fees or similar use fees incurred by Company on behalf of Customer.

(f) **Discontinued Services.** Company reserves the right, in its absolute discretion, to discontinue offering any Service(s) identified in any Service Attachment or Statement of Work, in whole or in part, upon sixty (60) days written notice to Customer. Company shall not be in breach of this paragraph 14(f) or any other provision of this Agreement if one or any of Company's vendors provides less than thirty (30) days' notice to Company that a particular service will no longer be available to its customers.

(g) **Effects of Termination.** Upon termination of this Agreement or an individual SOW and payment by Customer of all amounts due and owing, Company will, to the extent applicable, exercise reasonable efforts and cooperation to effect an orderly and efficient transition of Services to any

successor provider identified by Customer. Any such transition services shall be provided by Company on a time and materials basis.

15. **Acceptable Use Policy.** Customer, its employees and agents, and any person or entity authorized by Customer to utilize Company's network shall be bound by Company's Acceptable Use Policy (the "Use Policy") published on its website, available at netstandard.com/acceptable-use-policy. Violations of this Use Policy may result in a demand for immediate removal of offending material, immediate temporary or permanent filtering, blocked access, suspension or termination of service, or other action appropriate to the violation, as determined by Company in its sole discretion. When feasible, Company shall give notice of the violations and allow reasonable time for them to be cured, not to exceed ten (10) days; however, Company reserves the right to act without notice when necessary, as determined by Company in its sole discretion. Company may involve, and will cooperate with, law enforcement if criminal activity is suspected. Violators may also be subject to civil or criminal liability under applicable law. Refunds or credits are not issued in connection with actions taken for violations of this Use Policy.

16. **Exigent Circumstances.** When exigent circumstances arise, which threaten violation of existing laws, Company's Acceptable Use Policy or Privacy Policy, compromise of Company's network, or compromise of Customer's network, Company reserves the right, in its sole and absolute discretion, to take appropriate action without Customer consent. In such circumstances, Company will make reasonable efforts to contact Customer and to resolve the exigency. Examples of exigent circumstances include, but are not limited to, denial of service attacks, hijacking of a Customer website or application for unlawful use by an unauthorized third party, or infection of a resource within Customer's network by harmful malware.

17. **Customer Responsibilities**

    (a) Customer shall promptly notify Company of any changes to billing and contact information. Company is not responsible for any incorrect or inaccurate information provided by the Customer.

    (b) Encryption. Customer shall encrypt at the application level Confidential Information, Customer Data, and all data that is considered sensitive data or that must be treated as confidential under state or federal law or under Customer's contractual obligations to others. This includes, but is not limited to, Social Security Numbers, financial account numbers, driver's license numbers, state identification numbers, Protected Health Information (as that term is defined in Title II, Subtitle F of the Health Insurance Portability and Accountability Act, as amended (HIPAA) and regulations promulgated thereunder) and Nonpublic Personal Information (as that term is defined in Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley) and regulations promulgated thereunder).

    (c) Software. All software owned and operated by Customer must be legally-procured, operational and maintained, and supported at the level required for Company to perform the Services required under this Agreement. Customer grants Company, at no charge, the right to use any Customer-owned or developed application software systems required by Company to provide the Services specified in any SOW to Customer.

(d) Required Consents. Customer shall obtain and keep in effect all Required Consents necessary for Company to perform all of its obligations as set forth in this Agreement. Upon request, Customer will provide to Company evidence of any Required Consent. Company will be relieved of its obligations to the extent that they are affected by Customer's failure to promptly obtain and provide to Company any Required Consents. Company will adhere to reasonable terms and conditions pertaining to Content as notified in writing to Company. Company agrees not to remove or alter any copyright or other proprietary notice on or in any Content without Customer's consent.

(e) Content. Customer is solely responsible for: (a) all Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support; (b) all copyright, patent and trademark clearances in all applicable jurisdictions and usage agreements for any and all Content; (c) the selection of controls on the access and use of Content; and (d) the selection, management and use of any public and private keys and digital certificates it may use with the Services.

(f) Security. Unless contracted with Company to do so, Customer shall (a) use reasonable security precautions in connection with its use of the Services, i.e., maintain up-to-date virus scanning and operating system security patches and firewall protection; (b) require each User to use reasonable security precautions, i.e., maintain up-to-date virus scanning and operating system security patches and firewall protection. In addition, Customer shall not take any action or install any software that may preclude or impair Company's ability to access or administer its network or provide the Services.

18. Miscellaneous Provisions

(a) **Waiver.** The rights and remedies provided to each of the Parties herein shall be cumulative and in addition to any other rights and remedies provided by law or otherwise. Any failure in the exercise by either Party of its right to terminate this Agreement or to enforce any provision of this Agreement for default or violation by the other Party shall not prejudice such Party's rights of termination or enforcement for any further or other's default or violation or be deemed a waiver or forfeiture of those rights.

(b) **Privacy.** Company is committed to protecting the privacy of all of its customers, and Company has enacted policies to protect certain information from disclosure to third parties (the "Privacy Policy"). A copy of Company's Privacy Policy may be accessed via Company's website at netstandard.com/privacy-policy.

(c) **Force Majeure.** Neither Party will be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform results from causes beyond its control, including and without limitation: strikes, lockouts, or other industrial disturbances; pandemics; civil disturbances; fires; acts of God; acts of a public enemy; compliance with any regulations, order, or requirement of any governmental body or agency; or inability to obtain transportation or necessary materials in the open market. Each Party shall use reasonable efforts to mitigate the extent of the failure and their adverse consequences, provided however,

that should any such failure continue for more than thirty (30) days, this Agreement may be terminated without liability by the non-delaying Party.

(d) **Notices.** All notices required under or regarding this Agreement, including any Service Attachments, must be in writing and will be considered if delivered personally, mailed via registered or certified mail (return receipt requested and postage prepaid), sent by e-mail (confirmed by reply or read receipt) or sent by courier (confirmed by receipt), addressed to the contacts identified in Exhibit 1 to this Agreement.

(e) **Contact and Billing Information.** Customer's designated contact for Notices described above and billing information is identified in Exhibit 1 of this Agreement.

(f) **Assignment.** Customer may not assign this Agreement without the prior written consent of Company. Company may assign this Agreement without the prior written consent of Customer in connection with the acquisition of Company or the sale of all or substantially all of its assets.

(g) **Facility Rules and Safety Requirements.** The employees and agents of each Party, while on the premises of the other Party, shall be bound by any and all rules and regulations in effect, including safety and security requirements.

(h) **Survival.** Any provision of this Agreement that contemplates performance or observance following termination or expiration of this Agreement, or that by its nature should continue to be effective following termination or expiration of this Agreement, will survive termination or expiration of this Agreement and continue in full force and effect until the natural termination of the particular provision.

(i) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original for all purposes, and all of which shall constitute one and the same instrument. A signature transmitted by facsimile or scanned from the original, or an electronic signature applied through an electronic signature service in compliance with the federal Electronic Signatures in Global and National Commerce Act and the Kansas Uniform Electronic Transactions Act, shall be considered an original signature for purposes of this Agreement.

(j) **Severability.** If any term or provision of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement will not be affected.

(k) **Captions.** The section headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

(l) **Entire Agreement.** This Agreement and any Service Attachment(s) incorporated herein constitute the entire agreement between the Parties and supersede any prior or contemporaneous communications, representations or agreements between the Parties, whether oral or written, regarding the subject matter of this Agreement.

(m) **Modification.** Except as otherwise provided in a Service Attachment, this Agreement and any Service Attachment(s) may be modified only by an instrument in writing executed by the Parties hereto. Any written work order or request for additional services submitted by Customer shall

not modify the terms of this Agreement and will only be considered an offer to modify the Agreement.

(n) **Supremacy.** This Master Services Agreement shall replace and supersede all prior Master Services Agreements entered into by and between the Parties. Any Service Attachment(s) executed by the Parties after execution of this Master Services Agreement shall be governed only by this Master Services Agreement. The Parties acknowledge that some inconsistencies may exist between this Master Services Agreement and Service Attachments executed prior to this Master Services Agreement. The Parties agree that any inconsistencies or ambiguities that may arise between an existing Service Attachment and this Master Services Agreement shall be construed in favor of this Agreement.

(o) **Applicable Law.** This Agreement is made under and will be construed in accordance with the law of Kansas without giving effect to that state's choice of law rules. The forum for any dispute or litigation arising out of this Agreement shall be in the Johnson County District Court or in the Federal District Court for the state of Kansas.

(p) **Successors and Assigns.** This Agreement shall inure to the benefit of Company and Customer and any successors or assigns of Company and Customer.

(q) **Insurance.** Each Party will obtain and maintain in effect during the term of this Agreement, a policy or policies of comprehensive general liability, workers' compensation, professional liability, cyber liability, and other types of insurance each deems necessary to protect their individual interests from such claims, liabilities, or damages which may arise out of the performance of their respective obligations under this Agreement. For the avoidance of doubt, each Party is solely responsible for insuring its personal property wherever located and each Party acknowledges that neither of them will insure the property of the other while it is in transit or in the possession of the opposite Party.

(r) **Subcontractors.** Company may engage subcontractors to perform services under any SOW. Except as provided herein, Company shall be fully responsible for the acts of all subcontractors to the same extent it is responsible for the acts of its own employees.

(s) **No Third-Party Beneficiaries.** This Agreement does not and is not intended to confer any enforceable rights or remedies upon any person or party other than the Parties.

IN WITNESS WHEREOF, the Parties have executed this Master Services Agreement as of the Effective Date above.

NetStandard, Inc.	**[Customer legal name]**
SIGNATURE	SIGNATURE
NAME Sean Mackey	NAME [Signer name]
TITLE COO	TITLE [Signer title]
DATE	DATE

Addendum A

TERMS SPECIFIC TO HOSTING SERVICES ONLY

This Addendum A: Terms Specific to Hosting Services Only ("Addendum A") applies to any order services consisting of, but not limited to, network, storage and server devices, software programs, applications network management devices, and other items specified in a Statement of Work ("Hosting Services"). Any such orders shall be subject to the terms and conditions of this Addendum A.

1. Definitions.

1.1. **"Hosted Data"** is Customer Data including all data and information about Customer's business(es), customers, employees, operations, facilities, products, markets, assets or finances that Company obtains, creates, generates, collects or processes in connection with its performance of Services and is stored in the Hosting Environment.

1.2. **"Hosting Environment"** means Company's application hosting environment for the delivery of Hosting Services.

2. Information Security.

2.1. **Security Measures.** Company will maintain commercially reasonable security measures that are designed to (a) ensure the security of the Hosted Data stored by Company in the Hosting Environment; (b) protect against any anticipated threats or hazards to the security or integrity of the Hosted Data stored by Company in the Hosting Environment; and (c) protect against any unauthorized access to or use of the Hosted Data as stored by Company in the Hosting Environment.

2.2. **Notification and Prevention Obligations.** Upon becoming aware, Company shall promptly notify Customer of any actual security breach in its Hosting Environment that may result in the unauthorized access to or disclosure of unencrypted Hosted Data. This notification will state in reasonable detail the Hosted Data at risk. Company agrees to take all actions reasonably necessary under the circumstances to immediately prevent the continued unauthorized access of such information. Company further agrees that in the event of a breach of confidentiality or security, it will work in good faith and cooperate with Customer to address the breach. Company shall not be responsible or liable for any security breach caused by Customer.

2.3. **Audits by Company.** Company will undergo an annual SOC 2 Type II examination under the AICPA attestation standards (currently SSAE No. 18), or an equivalent independent audit of its security measures. Upon Customer's written request, Company shall provide a copy of its most recent report. The report is to be treated as Confidential Information under this Agreement whether or not marked or otherwise identified as "Confidential" and remains the property of Company.

2.4. **Audits by Customer.** Customer shall have the right to review Company's security measures prior to the commencement of the Services and thereafter on an annual basis during the term of this Agreement. Such annual review may include an onsite audit, conducted by qualified personnel,

of Company's data centers in order to inspect the Hosting Environment to verify Company's compliance with this Agreement. The dates of any onsite audit shall be mutually agreed upon by the Parties. Customer shall be responsible for the entire cost of any onsite audit. Company may charge Customer on a time-and-materials basis at the then-current standard time and materials rate for Customer audits and requests for information based on the length and detail of the audit/information requested. No such audit may include activities that might result in "downtime" or unavailability for the Hosting Environment. Any "downtime" or unavailability as a result of any audit by Customer shall not count as downtime for purposes of any SOW and shall not be a breach of this Agreement or any SOW by Company.

3. Customer Responsibilities

3.1. Access. Customer agrees not to access the Hosting Environment by any means other than through the interface that is provided by Company for use in accessing the Hosting Environment.

3.2. Capacity Planning. Customer is solely responsible for determining whether the services, Hosting Environment, and related Content meet Customer's capacity, performance, or scalability needs. Customer is responsible for planning for and requesting changes to the Hosting Environment and services, including any additional capacity required to support anticipated peaks in demand that may significantly increase website hits, transaction volumes, or otherwise increase system resource utilization.

4. Indemnification. Subject to the terms of Section 13 of the Agreement, Customer will indemnify, defend and hold harmless Company and its officers, directors, shareholders, employees, agents, successors and assigns from any and all liabilities, damages, costs and expenses, including reasonable attorney's fees and expenses, arising out of any claim, suit or proceeding (threatened or otherwise) made or brought by a third party against Company or its officers, directors, shareholders, employees, agents, successors and assigns based upon (a) any breach by Customer of its obligations under Section 3 of this Addendum A and (b) any claim that Company's possession, storage, or transmission of the Content or possession or use of the Customer Components, infringes on, violates, or misappropriates any patent, copyright, trademark, service mark, trade secret or other intellectual property or proprietary rights of such third party.

5. Survival. Those provisions that by their nature should survive termination of this Addendum A, will survive termination.

Exhibit 1

CONTACTS, NOTICE AND BILLING INFORMATION

This Exhibit 1 identifies the representatives and contacts referred to in Sections 14(a), 18(d) and 18(e) of the Agreement and the authorized contacts referred to in the Managed Services Attachment and the Service Catalog. Either Party may update its own entries by written notice under Section 18(d) of the Agreement without amending the Agreement.

PURPOSE	NETSTANDARD, INC.	[CUSTOMER LEGAL NAME]
Formal notices under the Agreement (Sections 14(a), 18(d) and 18(e))	Sean Mackey, Chief Operating Officer NetStandard, Inc. 10300 W 103rd Street, Overland Park, KS 66214 smackey@netstandard.com 913-428-4200	[Signer name], [Signer title] [Customer legal name] [Street address, City, ST ZIP] [email] [phone]
Authorized signatory	Sean Mackey, Chief Operating Officer	[Signer name], [Signer title]
Billing contact and invoice delivery	NetStandard Accounts Receivable accountsreceivable@netstandard.com 913-428-4200	Name: _____ Email: _____ Phone: _____
Authorized contacts for approvals, scope changes and escalations (Attachment Section 9.1(d))	Assigned vCIO and service delivery management, by role	[Signer name], [Signer title] [email] [phone] Additional authorized contacts: as designated by Customer by written notice
Service desk and Critical Incident reporting (Attachment Section 7)	NetStandard Service Desk, 913-428-4200 (24/7/365 for Critical Incidents where 24/7/365 support is selected in the Service Catalog) support@netstandard.com	Primary: [Signer name] [phone] Secondary: as designated by Customer by written notice

Customer's covered locations are listed in Section 6 of the Service Catalog.