

BY EXECUTING A SERVICE ORDER OR STATEMENT OF WORK THAT INCORPORATES THIS AGREEMENT, CUSTOMER AGREES TO FOLLOW AND BE BOUND BY THE TERMS OF THIS FOODBRIDGE SUBSCRIPTION. THE PERSON ENTERING INTO THIS AGREEMENT ON BEHALF OF CUSTOMER CONFIRMS THAT HE OR SHE HAS READ AND UNDERSTANDS THE TERMS AND CONDITIONS OF THIS AGREEMENT AND HAS THE AUTHORITY TO BIND CUSTOMER AND ITS RELATED PARTIES HERETO. CUSTOMER UNDERSTANDS THAT THE SERVICE IS PROVIDED TO YOU ON AN "AS-IS" BASIS AND THAT FOODBRIDGE ASSUMES NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY OR FAILURE TO STORE ANY USER COMMUNICATIONS OR PERSONALIZATION SETTINGS. CUSTOMER IS RESPONSIBLE FOR OBTAINING ACCESS TO THE SERVICE AND THAT ACCESS AND SUBSEQUENT USAGE MAY INVOLVE THIRD PARTY FEES (SUCH AS INTERNET ACCESS TO USE THE SERVICE).

FOODBRIDGE SUBSCRIPTION TERMS AND CONDITIONS

These FOODBRIDGE (“FOODBRIDGE”) TERMS AND CONDITIONS with the Initial Service Order, (the “**Agreement**”), effective as of the Effective Date (defined below), is by and between FOODBRIDGE and Customer (together with FoodBridge, the “**Parties**”).

The Parties agree:

Article 1. SERVICES.

Section 1.1 Services. Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of this Agreement, during the Term, FoodBridge shall use commercially reasonable efforts to provide to Customer and its Authorized Users the Subscriptions described in the Initial Service Order and this Agreement (collectively, the “**Subscriptions**”) in accordance with these Terms and Conditions which may be updated from time to time (collectively the “**Specifications**”). Additional Subscriptions can be added by the execution of a “**Change Order**”.

Section 1.2 Service and System Control. Except as otherwise expressly provided in this Agreement, as between the Parties:

(a) FoodBridge has and will retain sole control over the operation, provision, maintenance and management of the Subscriptions and FoodBridge Materials, including the: (i) FoodBridge Systems; (ii) selection, deployment, modification and replacement of the Service Software; and (iii) performance of support services and service maintenance, upgrades, corrections and repairs; and

(b) Customer has and will retain sole control over the operation, maintenance and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Subscriptions and FoodBridge Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any information, instructions or materials provided by any of them to the Subscriptions and results obtained from any use of the Subscriptions or FoodBridge Materials.

Section 1.3 Changes. FoodBridge reserves the right, in its sole discretion, to make any changes to the Subscriptions and FoodBridge Materials that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of FoodBridge’s services to its customers, (ii) the competitive strength of, or market for, FoodBridge’s services or (iii) the Subscriptions’ cost efficiency or performance; or (b) to comply with applicable Law.

Section 1.4 Subcontractors. FoodBridge may from time to time in its discretion engage third parties to perform Subscriptions (each, a “**Subcontractor**”).

Section 1.5 Suspension or Termination of Services. FoodBridge may, directly or indirectly, and by use of a FoodBridge Disabling Device or any other lawful means, suspend, terminate or otherwise deny Customer’s, any Authorized User’s or any other Person’s access to or use of all or any part of the Subscriptions or FoodBridge Materials, without incurring any resulting obligation or liability, if: (a) FoodBridge receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires FoodBridge to do so; or (b) FoodBridge believes, in its sole discretion, that: (i) Customer or any Authorized User has failed to comply with, any material term of this Agreement, or accessed or used the Subscriptions beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any material instruction or requirement of the Specifications; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Subscriptions; or (iii) this Agreement expires or is terminated. This Section 1.5 does not limit any of FoodBridge’s other rights or remedies, whether at law, in equity or under this Agreement.

Article 2. AUTHORIZATION AND CUSTOMER RESTRICTIONS.

Section 2.1 Authorization. Subject to and conditioned on Customer’s payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, FoodBridge hereby authorizes Customer to access and use, during the Term, the Subscriptions and such FoodBridge Materials as FoodBridge may supply or make available to Customer solely for the Permitted Use by and through Authorized Users in accordance with the Specifications, and the conditions and limitations set forth in this Agreement and Terms of Use. This authorization is non-exclusive and other than as may be expressly set forth in Section 15.6, non-transferable.

Section 2.2 Reservation of Rights. Nothing in this Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Subscriptions, FoodBridge Materials or Third-Party Materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Subscriptions, FoodBridge Materials and the Third-Party Materials are and will remain with FoodBridge and the respective rights holders in the Third-Party Materials.

Section 2.3 Authorization Limitations and Restrictions. Customer shall not, and shall not permit any other Person to, access or use the Subscriptions or FoodBridge Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

- (a) copy, modify or create derivative works or improvements of the Subscriptions or FoodBridge Materials;
- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Subscriptions or FoodBridge Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Subscriptions or FoodBridge Materials, in whole or in part;
- (d) bypass or breach any security device or protection used by the Subscriptions or FoodBridge Materials or access or use the Subscriptions or FoodBridge Materials other than by an Authorized User through the use of his or her own then valid access credentials;
- (e) input, upload, transmit or otherwise provide to or through the Subscriptions or FoodBridge Systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;
- (f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Subscriptions, FoodBridge Systems or FoodBridge's provision of Subscriptions to any third party, in whole or in part;
- (g) remove, delete, alter or obscure any trademarks, Specifications, Documentation, Terms of Use, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Subscriptions or FoodBridge Materials, including any copy thereof;

(h) access or use the Subscriptions or FoodBridge Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other FoodBridge customer), or that violates any applicable Law;

(i) access or use the Subscriptions or FoodBridge Materials for purposes of competitive analysis of the Subscriptions or FoodBridge Materials, the development, provision or use of a competing software service or product or any other purpose that is to FoodBridge's detriment or commercial disadvantage; or

Article 3. OTHERWISE ACCESS OR USE THE SUBSCRIPTIONS OR FOODBRIDGE MATERIALS BEYOND THE SCOPE OF THE AUTHORIZATION GRANTED UNDER SECTION 2.1. CUSTOMER OBLIGATIONS.

Section 3.1 Customer Systems and Cooperation.

Customer shall at all times during the Term:

- (a) set up, maintain and operate in good repair and in accordance with the Specifications all Customer Systems on or through which the Subscriptions are accessed or used;
- (b) provide FoodBridge Personnel with such access to Customer's premises and Customer Systems as is necessary for FoodBridge to manage the Subscriptions in accordance with the availability requirements and Specifications; and
- (c) provide all cooperation and assistance as FoodBridge may reasonably request to enable FoodBridge to exercise its rights and perform its obligations under and in connection with this Agreement.

Section 3.2 Effect of Customer Failure or Delay.

FoodBridge is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "**Customer Failure**").

Section 3.3 Corrective Action and Notice.

If Customer becomes aware of any actual or threatened activity prohibited by Section 2.3, Customer shall, and shall cause its Authorized Users to, immediately:

- (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Subscriptions and FoodBridge Materials and permanently erasing from their systems and

destroying any data to which any of them have gained unauthorized access); and

(b) notify FoodBridge of any such actual or threatened activity

Article 4. SECURITY.

Section 4.1 FoodBridge Systems and Security Obligations. FoodBridge shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data.

Section 4.2 Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) all Customer Data; (b) all information, instructions and materials provided by or on behalf of Customer or any Authorized User in connection with the Subscriptions; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services ("Customer Systems"); (d) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Subscriptions and FoodBridge Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, that access or use.

Section 4.3 Access and Security. Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of to the FoodBridge service; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by FoodBridge.

Article 5. TEXT MESSAGING.

Section 5.1 Text Messaging Terms and Conditions. Without limiting any other provision in this Agreement, Customer agrees to the following terms and conditions in this Article. (a) Customer shall be solely responsible for instructing FoodBridge to Initiate its desired Messages. The Customer further agrees and acknowledges that FoodBridge is not the sender of the Messages Initiated by Customer's use of FoodBridge, (b) Customer represents and warrants that FoodBridge will have no liability, and that Customer shall provide and be solely responsible in all respects, for: (i) the Recipient Numbers to which the Messages are to be transmitted, ensuring that Recipient Numbers are the correct Recipient Numbers for the Person, and will have been obtained and used at all times under the Agreement, in compliance with all applicable Laws and do not include (A) emergency lines, including those of any hospital, medical center, health care facility, poison control center, fire

protection agency, or law enforcement agency, (B) any number assigned to a paging service, cellular telephone service, or other wireless service, unless appropriate consents have been obtained, or (C) any number to which automated dialing or prerecorded message calls are prohibited under applicable Laws; (ii) establishing and providing the time(s), date(s) and delivery schedule(s) with respect to Messages, ensuring that (A) no Telemarketing Message is transmitted before 8 a.m. or after 9 p.m. local time at the Person's location, and (B) no Messages, including Telemarketing Messages, are transmitted outside of hours allowable under applicable Laws; and (iii) Customer's holding contests, sweepstakes or similar events using FoodBridge, (c) FoodBridge will use commercially reasonable efforts to ensure that FoodBridge conveys Customer's Messages as directed by Customer. FoodBridge cannot guarantee that Messages, once sent by FoodBridge, will be received, delivered or opened, (d) FoodBridge may provide Messages and other data to Providers which may reformat the Message to conform and adapt to Provider requirements and device requirements, (e) Customer shall be solely responsible for compliance with all applicable law, including but not limited to, the TCPA (including the propriety of the Recipient Numbers [including whether mobile numbers are to be called] where the Message is instructed by Customer to be delivered), and (f) Customer further represents and warrants that the Recipient Numbers used by Customer are obtained, and the Messages sent, in compliance with all applicable laws, and Customer shall take all steps necessary to ensure that continued use of the Recipient Numbers in any way contemplated by or agreed upon pursuant to this agreement complies with all applicable laws. FoodBridge reserves the right, but has no obligation, to delete or refuse to transmit any message, communication, content, and/or data that, in its opinion, violates any applicable law or industry standard. In such an event, FoodBridge will inform the customer of the violation.

Section 5.2 Provision of Texting Services and Code. (a) FoodBridge offers a mechanism for Persons to opt-out of receiving Text Messages from Customer. Customer represents and warrants that it shall include opt-out capabilities in each Message as required by Law, and Customer accepts sole responsibility for making that determination. If a message is sent between the hours 9 p.m. and 8 a.m. the Customer agrees to add a statement that the text message is informational and not Telemarketing. If a Subscriber sends an explicit and unambiguous opt-out request directly to the FoodBridge Platform by a Subscriber originated Text Message via mobile handset origination, then FoodBridge will confirm the opt-out with one subsequent message, or otherwise as in accordance with Law. Unless requested by Customer and required by Law, FoodBridge will not send an opt-out confirmation in respect of any other Subscriber opt-out request (e.g. an ambiguous Text Message, or an opt-out request initiated online, via the web, by voice call, or letter addressed to a street address); Customer accepts sole responsibility for determining whether such confirmation is required by Law and for instructing

FoodBridge to send out such messages if so required. (b) FoodBridge uses all commercially reasonable efforts to ensure the accuracy of its List Profile Report service; but all such data is provided by the Providers. To that end, FoodBridge makes no representation or warranty of any kind regarding the accuracy of such data returned from the List Profile Report service. Notwithstanding FoodBridge's efforts, Customer acknowledges and agrees that it is solely responsible for ensuring the propriety of using the Recipient Numbers provided to FoodBridge. (c) For Dedicated Short Codes, Toll-Free Numbers, and Standard Long Code, FoodBridge may require up to 12 weeks, depending on the Provider, to provision the Short Code, Toll-Free Numbers, or Standard Long Code for a Customer. Delays may occur if Customer does not respond quickly to requests such as for information and for payment. The applicable timeframe is also dependent upon the responsiveness of the Providers, and FoodBridge will not be held liable for such provisioning delays from specific Providers or Customers, or for reasons outside of FoodBridge's control. (d) Random Shared Short Codes provisioned for use, or other forms of Shared Short codes, are owned exclusively by FoodBridge and may be shared among multiple FoodBridge customers. At Customer's own expense, and for its own use, Customer may lease a Random Short Code, or purchase a Vanity Short Code. At all times a Short Code is active, Customer will be billed for all inbound Text Messages received, as well any responses to these inbound Text Messages. (e) Long Code Numbers, which are ten (10) digit telephone numbers in the FoodBridge application, are owned and maintained exclusively by FoodBridge, and as such are not portable to any other telephony service. (f) Short Code, Toll-Free Numbers, and Standard Long Code may be used only after the appropriate application is filed and approved. Customer represents and warrants that it will provide full, complete, and accurate information regarding to any application and the use thereof. In the event that FoodBridge submits an application on Customer's behalf, Customer agrees that Customer will be solely responsible for the contents of the application and any liability resulting from the information provided or omitted from the application.

Article 6. FEES; PAYMENT TERMS.

Section 6.1 Fees. Customer shall pay FoodBridge the fees set forth in each Service Order (including the Initial Service Order) as modified by any Change Orders ("Fees") in accordance with this Article 6. Customer may also incur charges from third-party service providers that are separate and apart from the amounts charged by FoodBridge. These may include, without limitations, charges resulting from accessing on-line services, messages or calls to parties who charge for their telephone based services, and purchasing or subscribing to other offers via the internet. Customer agrees that all such charges are Customer's sole responsibility.

Section 6.2 Service Order Renewal Terms. Unless otherwise provided in a Service Order, each Service Order will automatically annually renew for additional terms of one year (12 months) unless either Customer or FoodBridge

gives the other notice of non-renewal at least thirty (30) days prior to the end of the then current Term by sending notice to legal@myfoodbridge.com of their intent to not renew the term of the Service Order. If Customer gives said notice, the Service Order will then continue on a month-to-month basis and the Monthly Recurring Charges ("MRCs") for the Service(s) identified in the Service Order will automatically increase by 12%.

Section 6.3 Disconnect, Deactivate or Removal of any Service. If Customer wishes to disconnect, deactivate, and/or remove any Service(s) identified in the given Service Order upon the expiration of the Service Term of the Service Order, Customer, by one of its Authorized Users, must send the written notice at least thirty (30) days, but no more than one hundred eighty (180) days, prior to the end of the then current Term to legal@myfoodbridge.com and execute a Confirmation of Deactivation form provided by FoodBridge. If Customer fails to provide the written notice and executed Confirmation of Deactivation form required by this paragraph, the Service Term of the Service Order in question will automatically renew for a duration of twelve (12) months for all the Services stated in the given Service Order.

Section 6.4 Fee Increases. Nothing in this section shall limit or otherwise reduce Customer's obligation to pay an Early Termination Fee, if applicable. FoodBridge may increase Fees for any contract year following the expiration of any initial or renewal Term of a Service Order by providing written notice to Customer at least ninety (90) calendar days prior to the commencement of that contract year, and the Service Order will be deemed amended accordingly.

Section 6.5 Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on FoodBridge's income.

Section 6.6 Charges and Billings. Within fifteen (15) days of the date on which Customer executes each Service Order, Customer shall pay FoodBridge all of the non-recurring charges designated on such Service Order as "Non-recurring Charges" ("NRC"). Customer further agrees to pay FoodBridge all charges associated with the Services and/or Products as stated in each Service Order, including without limitation the "Monthly Recurring Charges" ("MRC") for each Service or Product. In the event that some, but not all, Products and/or Services associated with a Service Order are installed or activated, Customer agrees to pay FoodBridge the MRCs and Additional Charges associated with those Services that are installed or activated even though the Effective Date for the entire Service Order has not commenced. The MRC for the initial month of each Service shall be prorated from the start of that Service through the end of that calendar month.

Section 6.7 Payment. Upon commencement of the entire Service Order, Customer shall pay all Fees within fifteen (15) days after the date the invoice is sent to Customer at the email address specified in accordance with Section 15.4. Customer shall make payments to the address or account specified in Initial Service Order or such other address or account as FoodBridge may specify in writing from time to time.

Section 6.8 Late Payment. If Customer fails to make any payment when due then, in addition to all other remedies that may be available:

(a) FoodBridge may charge interest on the past due amount at the rate of 1.5% or \$25.00, whichever is greater, per month, calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law;

(b) Customer shall reimburse FoodBridge for all costs incurred by FoodBridge in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees; and

(c) if such failure continues for thirty (30) days following written notice thereof, FoodBridge may suspend performance of the Subscriptions until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer or any other Person by reason of such suspension.

Section 6.9 No Deductions or Setoffs. All amounts payable to FoodBridge under this Agreement shall be paid by Customer to FoodBridge in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than service credits issued pursuant to the Service Level Agreement or any deduction or withholding of tax as may be required by applicable Law).

Article 7. INTELLECTUAL PROPERTY RIGHTS.

Section 7.1 Services and FoodBridge Materials. All right, title and interest in and to the Subscriptions and FoodBridge Materials, including all Intellectual Property Rights therein, are and will remain with FoodBridge and the respective rights holders in the Third-Party Materials. Customer has no right, license or authorization with respect to any of the Subscriptions or FoodBridge Materials (including Third Party Materials) except as expressly set forth in Section 2.1 or the applicable third-party license, in each case subject to Section 2.3 All other rights in and to the Subscriptions and FoodBridge Materials (including Third Party Materials) are expressly reserved by FoodBridge and the respective third-party licensors.

Section 7.2 Customer Data. As between Customer and FoodBridge, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 7.3.

Section 7.3 Consent to Use Customer Data. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data: (a) to FoodBridge, its Affiliates, its Subcontractors and FoodBridge Personnel as are necessary or useful to perform or improve the Subscriptions; and (b) to FoodBridge as are necessary or useful to enforce this Agreement and exercise its rights and perform its hereunder, (c) to FoodBridge and its Affiliates to analyze the use of the Subscriptions, to improve the Subscriptions, to develop enhancements to the Subscriptions that will facilitate communications for its current and future customers and to create anonymized and aggregated data that is used to analyze communications within and between organizations and individuals in order to create products and services to be offered by FoodBridge and its Affiliates; and (d) to FoodBridge and its Affiliates to create anonymized and aggregated data that may be used for any lawful purpose. By accessing or using any services related to this subscription and/or provided by FoodBridge, Customer acknowledges that is has reviewed and agrees to the FoodBridge Privacy Policy, including but not limited to the provisions related to Collection and Use of Information and Disclosure of Personal Information to Third Parties located at <https://www.myfoodbridge.com/privacy-policy/>. If Customer does not accept the terms of these privacy policies, it must stop using FoodBridge Services immediately. Notwithstanding the foregoing, Customer agrees that Customer retains no interest in non-identifiable and/or anonymized aggregate data and usage statistics compiled by FoodBridge in connection with Customer's use of the subscription and/or any other related features or components provided by or, which data and statistics FoodBridge may use in its discretion.

Section 7.4 Compliance with the Digital Millennium Copyright Act. FoodBridge abides by the federal Digital Millennium Copyright Act (DMCA) by responding to notices of alleged infringement that comply with the DMCA and other applicable laws. As part of the responses, FoodBridge may remove or disable access to material residing on a site that is controlled or operated by FoodBridge and that is claimed to be infringing, in which case FoodBridge will make a good faith attempt to contact the person who submitted the affected material so that they may make a counter notification, also in accordance with the DMCA. FoodBridge does not control content hosted on third party websites, and it cannot remove content from sites it does not own or control. If Customer is the copyright owner of content hosted on a third-party site, and it has not authorized the use of its content, Customer should contact the administrator of that website directly to have the content removed. Before serving either a Notice of Infringing Material or a Counter-Notification, Customer may wish to contact a lawyer to better understand its rights and obligations under the DMCA and other applicable laws. The following notice requirements are intended to comply with FoodBridge's rights and obligations under the DMCA and, in particular, section 512(c). They do not constitute legal advice.

Section 7.5 Filing a Notice of Infringing Material Under the DMCA. To file a notice of infringing material on a Site owned or controlled by FoodBridge, please provide a notification containing the following details:

1. Reasonably sufficient details to enable us to identify the work claimed to be infringed or, if multiple works are claimed to be infringed, a representative list of such works (for example, the title, author, any registration or tracking number, and URL);
2. Reasonably sufficient detail to enable us to identify and locate the material that is claimed to be infringing (for example, a link to the page that contains the material);
3. Your contact information so that we can contact you (for example, your address, telephone number, or email address);
4. A statement that you have a good faith belief that the use of the material identified in (2) is not authorized by the copyright owner, its agent, or the law;
5. A statement, under penalty of perjury, that the information in the notification is accurate and that you are authorized to act on behalf of the owner of the exclusive right that is alleged to be infringed.
6. Your physical or electronic signature.

Article 8. CONFIDENTIALITY.

Section 8.1 Confidential Information. In connection with this Agreement each Party (as the “Disclosing Party”) may disclose or make available Confidential Information to the other Party (as the “Receiving Party”). Subject to Section 8.2, “Confidential Information” means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party’s technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations. Without limiting the foregoing: all FoodBridge Materials and this Agreement are the Confidential Information of FoodBridge.

Section 8.2 Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information’s being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party’s or any of its Representatives’ noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or

is independently developed by the Receiving Party without reference to or use of any Confidential Information.

Section 8.3 Protection of Confidential Information.

As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

- (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;
- (b) except as may be permitted by and subject to its compliance with Section 8.3(e), not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party’s exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party’s obligations under this Section 8.3; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 8.3;
- (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its most sensitive information and in no event less than a reasonable degree of care; and
- (d) ensure its Representatives’ compliance with, and be responsible and liable for any of its Representatives’ non-compliance with, the terms of Article 8.
- (e) **Compelled Disclosures.** If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (i) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 8.3; and (ii) provide reasonable assistance to the Disclosing Party, at the Disclosing Party’s sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 8.3(e), the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party’s legal counsel, the Receiving Party is legally required to disclose and, on the Disclosing Party’s request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other

presiding authority that such Confidential Information will be afforded confidential treatment.

Article 9. TERM AND TERMINATION.

Section 9.1 Term. The term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect until the last Service Order Term expires (the "**Term**").

Section 9.2 Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

(a) FoodBridge may terminate this Agreement, effective upon written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder, and the failure continues more than thirty (30) days after FoodBridge's delivery of written notice of failure to pay; or (ii) breaches any of its obligations under Section 2.3 or Article 8.

(b) either Party may terminate this Agreement, effective upon written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; and

(c) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) makes or seeks to make a general assignment for the benefit of its creditors; or (iii) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

Section 9.3 Effect of Expiration or Termination.

Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

(a) all rights, licenses, consents and authorizations granted by either Party to the other hereunder will immediately terminate;

(b) FoodBridge shall immediately cease all use of any non-anonymized Customer Data or Customer's Confidential Information and (i) at Customer's written request, return to Customer or destroy, all documents and tangible materials containing, reflecting, incorporating or based on non-anonymized Customer Data or Customer's Confidential Information; and (ii) permanently erase all non-anonymized Customer Data and Customer's Confidential Information from all systems FoodBridge directly or indirectly controls;

(c) Customer shall immediately cease all use of any Subscriptions or FoodBridge Materials and (i) at

FoodBridge's written request return to FoodBridge or destroy all documents and tangible materials containing, reflecting, incorporating or based on FoodBridge's Confidential Information; and (ii) permanently erase FoodBridge's Confidential Information from all systems Customer directly or indirectly controls;

(d) if Customer terminates this Agreement pursuant to Section 9.2(b), Customer will be relieved of any obligation to pay any Fees (including Early Termination Fees) attributable to the period after the effective date of the termination and FoodBridge will refund to Customer Fees paid in advance for Subscriptions that FoodBridge has not performed as of the effective date of termination;

(e) if FoodBridge terminates this Agreement pursuant to Section 9.2(a) or Section 9.2(b), or if the Customer Terminates this Agreement or any Service Order at any time prior to the expiration of any Service Term of any Service Order for convenience, all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees and any expenses that are reimbursable, on receipt of FoodBridge's invoice. These Early Termination Fees are calculated pursuant to the definition of "Early Termination Fee" set forth in the Definitions. Customer agrees that the amount of the Early Termination Fee is a genuine estimate of FoodBridge's actual damages resulting from an early termination of the Services, and therefore for the sake of efficiency, economy and convenience, the Early Termination Fee set forth herein constitutes liquidated damages, is reasonable, and is not intended as a penalty or to be punitive in nature.

Section 9.4 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the Parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 2.3, Article 8, Section 9.3, this Section 9.4, Article 10, Article 11, Article 12 and Article 14.

Article 10. REPRESENTATIONS AND WARRANTIES.

Section 10.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

(b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement;

(c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of the Party; and

(d) when executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of the Party, enforceable against the Party in accordance with its terms.

Section 10.2 Additional FoodBridge Representations, Warranties and Covenants. FoodBridge represents, warrants and covenants to Customer that FoodBridge will perform the Subscriptions using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

Section 10.3 Additional Customer Representations, Warranties and Covenants. Customer represents, warrants and covenants to FoodBridge that Customer owns, has licensed, and/or otherwise has obtained the rights to use the Customer data and the necessary and appropriate consents in and relating to the Customer Data so that, as received by FoodBridge and processed in accordance with this Agreement and/or in any way contemplated or agreed upon pursuant to this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

Section 10.4 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 10.1, SECTION 10.2 AND SECTION 10.3, ALL FOODBRIDGE SERVICES AND FOODBRIDGE MATERIALS ARE PROVIDED “AS IS” AND FOODBRIDGE HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND FOODBRIDGE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, FOODBRIDGE MAKES NO WARRANTY OF ANY KIND THAT THE FOODBRIDGE SERVICES OR FOODBRIDGE MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER FOODBRIDGE SERVICES EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE SPECIFICATIONS, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE

OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

Article 11. INDEMNIFICATION.

Section 11.1 FoodBridge Indemnification. FoodBridge shall indemnify, defend and hold harmless Customer from and against any and all Losses incurred by Customer arising out of or relating to any claim, suit, action or proceeding (each, an “Action”) by a third party (other than an Affiliate of Customer) to the extent that such Losses arise from any allegation in the Action that Customer’s use of the Subscriptions (excluding Customer Data and Third Party Materials) in compliance with this Agreement (including the Specifications) infringes an Intellectual Property Right. The foregoing obligation does not apply to any Action or Losses arising out of or relating to any: access to or use of the Subscriptions or FoodBridge Materials in combination with any hardware, system, software, network or other materials or service not provided or authorized in the Specifications or otherwise in writing by FoodBridge;

(a) modification of the Subscriptions or FoodBridge Materials other than: (i) by or on behalf of FoodBridge; or (ii) with FoodBridge’s written approval in accordance with FoodBridge’s written specification;

(b) failure to timely implement any modifications, upgrades, replacements or enhancements made available to Customer by or on behalf of FoodBridge; or

(c) act, omission or other matter described in Section 11.2(a), Section 11.2(b), Section 11.2(c) or Section 11.2(d), whether or not the same results in any Action against or Losses by any FoodBridge Indemnitee.

Section 11.2 Customer Indemnification. Customer shall indemnify, defend and hold harmless FoodBridge and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, a “**FoodBridge Indemnitee**”) from and against any and all Losses incurred by such FoodBridge Indemnitee in connection with any Action by a third party (other than an Affiliate of a FoodBridge Indemnitee) to the extent that such Losses arise out of or relate to any:

(a) Customer Data, including any Processing of Customer Data by or on behalf of FoodBridge in accordance with this Agreement;

(b) any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of Customer or any Authorized User, including FoodBridge’s compliance with any specifications or directions

provided by or on behalf of Customer or any Authorized User to the extent prepared without any contribution by FoodBridge;

(c) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants or obligations under this Agreement; or

(d) negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User, in connection with this Agreement.

Section 11.3 Indemnification Procedure. Each Party shall promptly notify the other Party in writing of any Action for which the Party believes it is entitled to be indemnified pursuant to Section 11.1 or Section 11.2, as the case may be. The Party seeking indemnification (the "Indemnitee") shall cooperate with the other Party (the "Indemnitor") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel reasonably acceptable to the Indemnitee to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this Section 11.3 will not relieve the Indemnitor of its obligations under this Article 11 except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

Section 11.4 Mitigation. If any of the Subscriptions or FoodBridge Materials are, or in FoodBridge's opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Customer's or any Authorized User's use of the Subscriptions or FoodBridge Materials is enjoined or threatened to be enjoined, FoodBridge may, at its option and sole cost and expense:

(a) obtain the right for Customer to continue to use the Subscriptions and FoodBridge Materials materially as contemplated by this Agreement;

(b) modify or replace the Subscriptions and FoodBridge Materials, in whole or in part, to seek to make the Subscriptions and FoodBridge Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Subscriptions and FoodBridge Materials, as applicable, under this Agreement; or

(c) by written notice to Customer, terminate this Agreement with respect to all or part of the Subscriptions and FoodBridge Materials, and require Customer to immediately cease any use of the

Subscriptions and FoodBridge Materials or any specified part or feature thereof.

THIS ARTICLE 11 SETS FORTH CUSTOMER'S SOLE REMEDIES AND FOODBRIDGE'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE FOODBRIDGE SERVICES AND FOODBRIDGE MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.

Article 12. LIMITATIONS OF LIABILITY.

Section 12.1 EXCLUSION OF DAMAGES. IN NO EVENT WILL FOODBRIDGE OR ANY OF ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE FOODBRIDGE SERVICES, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS PURSUANT TO THE SERVICE LEVEL AGREEMENT; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

Section 12.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF FOODBRIDGE AND ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE AMOUNT PAID BY CUSTOMER TO FOODBRIDGE UNDER THIS AGREEMENT DURING THE SIX MONTHS IMMEDIATELY PRIOR TO THE DATE SUCH LIABILITY ARISES. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

Article 13. FORCE MAJEURE.

Section 13.1 No Breach or Default. In no event will FoodBridge be liable or responsible to Customer, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any circumstances beyond FoodBridge's reasonable control (a "Force Majeure Event"), including acts of God, epidemic, pandemic, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation.

Section 13.2 Affected Party Obligations. In the event of any failure or delay caused by a Force Majeure Event, FoodBridge shall give prompt written notice to Customer stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

Article 14. DEFINITIONS.

Section 14.1 Defined Terms. The following terms shall have the specified meanings.

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

"Action" has the meaning set forth in Section 11.1.

"Affiliate" of a party means any entity that such party directly or indirectly controls, is controlled by, or is under common control with. In this context, a party "controls" a corporation or other entity if it or any combination of it and/or its Affiliates owns more than fifty percent (50%) of the voting rights for (i) the board of directors, or (ii) other mechanism of control for such corporation or other entity.

"Agreement" has the meaning set forth in the caption.

"Authorized User" means each of the individuals authorized to use the Subscriptions pursuant to Section 2.1 and the other terms and conditions of this Agreement as described in the relevant Service Order.

"Change Order" has the meaning set forth in Section 1.1

"Confidential Information" has the meaning set forth in Section 8.1.

"Customer Data" means information, data and other content, in any form or medium, that is collected, downloaded

or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Subscriptions or that incorporates or is derived from the Processing of the information, data or content by or through the Subscriptions.

"Customer Failure" has the meaning set forth in Section 3.2.

"Customer Systems" has the meaning set forth in Section 4.2.

"Customer" has the meaning set forth in the caption.

"Disclosing Party" has the meaning set forth in Section 8.1.

"Documentation" means any manuals, instructions or other documents or materials that FoodBridge provides or makes available to Customer in any form or medium and which describe the functionality, components, features or requirements of the Subscriptions or FoodBridge Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

"Early Termination Fee" means with respect to each existing Service Order, an amount equal to:

- (a) the number of months remaining in the Service Term of the applicable Service Order from the Termination Date through the end of the applicable Service Term, multiplied by the MRCs with respect to each Service that is terminated; plus
- (b) all Charges that are unpaid as of the Termination Date; plus
- (c) all costs and expenses incurred by FoodBridge in disconnecting such Service; plus
- (d) any other amounts required to be paid by Customer pursuant to the applicable Service Order.

"Effective Date" shall be the date in which the Subscription specified on a Service Order is available for use by the Customer (i.e., "goes live"). For further clarification and the avoidance of any doubt, the Effective Date will be the date in which all services specified on a given Service Order are live and ready for Customer use (i.e., not in a development or testing phase).

"Fees" means all NRCs, MRCs, Additional Fees and Costs and any and all other amounts payable by Customer pursuant to this Subscription Agreement as more fully defined in Article 6.

"Force Majeure Event" has the meaning set forth in Section 13.1.

"Harmful Code" means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of

the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent Customer or any Authorized User from accessing or using the Subscriptions or FoodBridge Systems as intended by this Agreement. Harmful Code does not include any FoodBridge Disabling Device.

“**Indemnitee**” has the meaning set forth in Section 11.3.

“**Indemnitor**” has the meaning set forth in Section 11.3.

“**Initial Service Order**” has the meaning set forth in the caption.

“**Initiate(ion)**” The service provided with respect to Messages by the FoodBridge Platform. For purposes of clarification, the FoodBridge Platform routes the Messages to Customer’s Provider. It does not carry the Message to a recipient. From the point of completion of Initiation, the remaining route to the recipient is provided by Customer through Customer’s Provider.

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

“**FoodBridge Disabling Device**” means any software, hardware or other technology, device or means (including any back door, time bomb, time out, drop dead device, software routine or other disabling device) used by FoodBridge or its designee to disable Customer’s or any Authorized User’s access to or use of the Subscriptions automatically with the passage of time or under the positive control of FoodBridge or its designee.

“**FoodBridge Indemnitee**” has the meaning set forth in Section 11.2.

“**FoodBridge Materials**” means the Service Software, Specifications, Documentation and FoodBridge Systems and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by FoodBridge or any Subcontractor in connection with the Subscriptions or otherwise comprise or relate to the Subscriptions or FoodBridge Systems. For the avoidance of doubt, FoodBridge Materials include any information, data or other content derived from FoodBridge’s monitoring of Customer’s access to or use of the Subscriptions.

“**FoodBridge Personnel**” means all individuals involved in the performance of Subscriptions as employees, agents or independent contractors of FoodBridge or any Subcontractor.

“**FoodBridge Systems**” means the information technology infrastructure used by or on behalf of FoodBridge in performing the Subscriptions, including all computers, software, hardware, databases, electronic systems (including database management

systems) and networks, whether operated directly by FoodBridge or through the use of third-party services.

“**FoodBridge**” has the meaning set forth in the caption.

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

“**List Profile Report**” Information about each device (phone number or email address) and/or the Provider information contained within a list on the FoodBridge Platform. The report provides a record for each device contained in each contact in the list and the Provider of that device.

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

“**MRC**” means the monthly recurring charges associated with a contracted Service or Solution.

“**NRC**” means the non-recurring charges associated with a contracted Service or Solution.

“**Permitted Use**” means any use of the Subscriptions by an Authorized User for the benefit of Customer solely in or for Customer’s internal business operations.

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

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

“**Providers**” Paging and mobile network carriers and other companies that provide message routing for the telephone industry and other services.

“**Receiving Party**” has the meaning set forth in Section 8.1.

Recipient Numbers: The telephone numbers to and web addresses at which Customer may cause the Initiation of a Message.

“**Representatives**” means, with respect to a Party, that Party’s and its Affiliates’ employees, officers, directors,

consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors.

“**Service Level Agreement**” means the Service Level Agreement as maintained by FoodBridge.

“**Service Order Term**” means the term for the Subscriptions specified in the relevant Service Order as the term may be renewed.

“**Service Order**” means the Initial Service Order and any additional service orders, executed by the Parties for Subscriptions.

“**Service Software**” means the FoodBridge software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that FoodBridge provides to allow remote access to and use of as part of the Subscriptions.

“**Shared Short Code**” A randomly assigned Short Code which is used by multiple FoodBridge customers.

“**Short Code**” A 5 or 6-digit special Telephone Number that is used to address SMS and MMS messages from mobile phones.

“**Specification**” has the meaning set forth in Section 1.1.

“**Subcontractor**” has the meaning set forth in Section 1.4.

“**Subscriber**” The subscriber on a wireless telecommunications network that sends or receives Messages via a wireless device. The Subscriber is the consumer of the Messaging Service provided by FoodBridge and the Customer.

“**Subscriptions**” has the meaning set forth in Section 1.1.

“**TCPA**” Telephone Consumer Protection Act.

“**Telemarketing Message**” A Message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services. Except as specifically identified otherwise, the term Telemarketing Message also includes solicitation for charitable contributions.

“**Telephone Numbers**” Local Numbers as well as Toll Free Numbers, assigned by a Provider, for use by Customers in conjunction FoodBridge.

“**Term**” has the meaning set forth in Section 9.1.

“**Terms of Use**” means the FoodBridge’s Terms of Use, a copy of which was available as of the Effective Date at the <https://www.myfoodbridge.com/terms-of-use/>.

“**Text Messages**” Mobile originated and mobile terminated messages containing text that are sent and received to/by the Subscriber. Each Message sent that is longer than what can fit into one text message body (typically 160 characters), may be divided into multiple Text Messages and delivered separately. In such case, each Text Message in a divided series shall be considered a separate and distinct Text Message and shall be charged accordingly. For example, if a Text Message

contains 180 characters, then two (2) Text Messages shall be considered sent.

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

“**Toll-Free Number**” A toll-free phone number that supports both voice and text communication.

“**Vanity Short Code**” A specific Short Code that is dedicated and chosen by the Customer.

Article 15. MISCELLANEOUS.

Section 15.1 Further Assurances. Upon a Party’s reasonable request, the other Party shall, at the requesting Party’s sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

Section 15.2 Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

Section 15.3 Public Announcements. Neither Party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or otherwise use the other Party’s trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, in each case, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that FoodBridge may, without Customer’s consent, include Customer’s name in its lists of FoodBridge’s current or former customers of FoodBridge in promotional and marketing materials.

Section 15.4 Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement have binding legal effect only if in writing to such address and person that the Party may designate from time to time in accordance with this Section 15.4:

FoodBridge
350 Westfield Road, Suite 400
Noblesville, Indiana 46060
Attention: Legal

Notices sent in accordance with this Section 15.4 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, e-mail, with confirmation of

transmission, if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the 3rd day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

Section 15.5 Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

Section 15.6 Assignment. Customer agrees that the FoodBridge account is not transferable, and this Agreement may not be assigned by Customer without FoodBridge's prior written consent, which consent FoodBridge may give or withhold in its sole discretion.

Section 15.7 Waiver and Severability of Terms. The failure of FoodBridge to exercise or enforce any right or provision of this Agreement shall constitute a waiver of such right or provision. If any provision of this Agreement is found, by a court of competent jurisdiction, to be invalid the Parties nevertheless agree that the court should endeavor to give effect to the Parties' intentions as reflected in the provision, and the provisions of this Agreement remain in full force and effect.

Section 15.9 Governing Law; Submission to Jurisdiction. This Agreement and the relationship between the Parties shall be governed by the laws of the State of Indiana without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Indiana. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Indiana, in each case located in the city of Indianapolis and County of Marion, and each Party irrevocably submits to the exclusive jurisdiction of those courts in suit, action or proceeding. Service of process, summons, notice or other document by mail to the Party's address set forth in this agreement shall be effective service of process for any suit, action or other proceeding brought in these courts.

Section 15.10 Changes to this Agreement. At our discretion, we may change out the subscription agreement to reflect current acceptable practices. We will take reasonable steps to let users know about changes via our website. Your continued use of this site after any changes to this agreement will be regarded as acceptance of our practices around privacy and personal information. If we make a significant change to this subscription agreement we will ask you to re-consent to the amended agreement.

Section 15.10 Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by the Party of any of its obligations under Article 8 or, in

the case of Customer, Section 2.3 or Section 3.3, would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

FOODBRIDGE SHORT CODE ADDENDUM TEXT MESSAGING TERMS AND CONDITIONS

The parties agree that this Addendum, effective on the Effective Date, may be executed by execution of this or a governing document. The parties further agree that such execution may occur by any means of signature, including via electronic commerce or transmission, including facsimile, email, or acknowledgement through a webpage. To that end, by executing the Services Order, Customer agrees to be bound by the all the terms and conditions of the Agreement, including this Addendum. Unless otherwise stated herein, this Addendum, together with the Agreement, collectively govern those certain terms applicable to the FoodBridge Services. The terms of this Addendum are supplemental to, and are not in lieu of any of the terms of the Agreement. In the event of a conflict between a Service Order, the Agreement, and this Addendum, the terms of this Addendum shall prevail but only for the express purposes of the conflicting provision. Notwithstanding the foregoing, in the event a provision in the Agreement begins with "without limiting" or "notwithstanding," such provision of the Agreement shall prevail. Defined terms are set forth in the Agreement, unless they apply only to this Addendum, in which case they are set forth in the following Section 3. 1. General Terms and Conditions. (a) Customer shall be solely responsible for instructing FoodBridge to Initiate its desired Messages. The Customer further agrees and acknowledges that FoodBridge is not the sender of the Messages Initiated by Customer's use of FoodBridge technologies, (b) Customer represents and warrants that FoodBridge will have no liability, and that Customer shall provide and be solely responsible in all respects, for: (i) the Recipient Numbers to which the Messages are to be transmitted, ensuring that Recipient Numbers are the correct Recipient Numbers for the Person, and will have been obtained and used at all times under the Agreement, in compliance with all applicable Laws and do not include (A) emergency lines, including those of any hospital, medical center, health care facility, poison control center, fire protection agency, or law enforcement agency, (B) any number assigned to a paging service, cellular telephone service, or other wireless service, unless appropriate consents have been obtained, or (C) any number to which automated dialing or prerecorded message calls are prohibited under applicable Laws; (ii) establishing and providing the time(s), date(s) and delivery schedule(s) with respect to Messages, ensuring that (A) no Telemarketing Message is transmitted

before 8 a.m. or after 9 p.m. local time at the Person's location, and (B) no Messages, including Telemarketing Messages, are transmitted outside of hours allowable under applicable Laws; and (iii) Customer's holding contests, sweepstakes or similar events using FoodBridge, (c) FoodBridge will use commercially reasonable efforts to ensure that FoodBridge conveys Customer's Messages as directed by Customer. FoodBridge cannot guarantee that Messages, once sent by FoodBridge, will be received, delivered or opened, (d) FoodBridge may provide Messages and other data to Providers which may reformat the Message to conform and adapt to Provider requirements and device requirements, (e) Customer shall be solely responsible for compliance with the TCPA (including the propriety of the Recipient Numbers [including whether mobile numbers are to be called] where the Message is instructed by Customer to be delivered). The Recipient Numbers used by Customer shall have been obtained, and the Text Messages sent, in compliance with, and Customer shall take all steps necessary to ensure that continued use of the Recipient Numbers for such Text Messages complies with all Laws. 2. Text Messaging Terms and Conditions. (a) FoodBridge offers a mechanism for Persons to opt-out of receiving Text Messages from Customer. Customer represents and warrants that it shall include opt-out capabilities in each Message if required by Law, and Customer accepts sole responsibility for making that determination. If a message is sent between the hours 9 p.m. and 8 a.m. local time the Customer agrees to add a statement that the text message is informational and not Telemarketing. If a Subscriber sends an explicit and unambiguous opt-out request directly to the FoodBridge Platform by a Subscriber originated Text Message via mobile handset origination, then FoodBridge will confirm the opt-out with one subsequent message, or otherwise as in accordance with Law. Unless requested by Customer and required by Law, FoodBridge will not send an opt-out confirmation in respect of any other Subscriber opt-out request (e.g. an ambiguous Text Message, or an opt-out request initiated online, via the web, by voice call, or letter addressed to a street address); Customer accepts sole responsibility for determining whether such confirmation is required by Law and for instructing FoodBridge to send out such messages if so required, (b) FoodBridge uses all commercially reasonable efforts to ensure the accuracy of its List Profile Report service; but all such data is provided by the Providers. To that end, FoodBridge makes no representation or warranty of any kind regarding the accuracy of such data returned from the List Profile Report service. Notwithstanding FoodBridge's efforts, Customer acknowledges and agrees that it is solely responsible for ensuring the propriety of using the Recipient Numbers provided to FoodBridge, (c) Short Codes are required for Customer Messages. For Dedicated Short Codes, FoodBridge may require up to 12 weeks, depending on the Provider, to provision the Short Code for a Customer. Delays may occur if Customer does not respond quickly to requests such as for information and for payment. The applicable timeframe is also dependent upon the responsiveness of the Providers, and FoodBridge will not be held liable for such provisioning delays from specific

Providers or Customers, or for reasons outside of FoodBridge's control, (d) Random Short Codes provisioned for use, or other forms of Shared Short Codes, are owned exclusively by FoodBridge and may be shared among multiple FoodBridge customers. At Customer's own expense, and for its own use, Customer may lease a Random Short Code, or purchase a Vanity Short Code. At all times a Short Code is active, Customer will be billed for all inbound Text Messages received, as well any responses to these inbound Text Messages, (e) Long Code Numbers, which are ten (10) digit telephone numbers in the FoodBridge application, are owned and maintained exclusively by FoodBridge, and as such are not portable to any other telephony service. 3. Defined Terms. Initiate(ion): The service provided with respect to Messages by the FoodBridge Platform. For purposes of clarification, the FoodBridge Platform routes the Messages to Customer's Provider. It does not carry the Message to a recipient. From the point of completion of Initiation, the remaining transmission is provided by Customer (through Customer's Provider). List Profile Report: Information about each device (phone number or email address) and/or the Provider information contained within a list on the FoodBridge Platform. The report provides a record for each device contained in each contact in the list and the Provider of that device. Providers: Paging and mobile network carriers and other companies that provide message routing for the telephone industry and other services. Recipient Numbers: The telephone numbers to and web addresses at which Customer may cause the Initiation of a Message. Shared Short Code: A randomly assigned Short Code which is used by multiple FoodBridge customers. Short Code: A 5 or 6-digit special Telephone Number that is used to address SMS and MMS messages from mobile phones. Subscriber: The subscriber on a wireless telecommunications network that sends or receives Messages via a wireless device. The Subscriber is the consumer of the Messaging Service provided by FoodBridge and the Customer. Telemarketing Message: A Message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services. Except as specifically identified otherwise, the term Telemarketing Message also includes solicitation for charitable contributions. Telephone Numbers: Local Numbers as well as Toll Free Numbers, assigned by a Provider, for use by Customers in conjunction FoodBridge. TCPA: Telephone Consumer Protection Act. Text Messages: Mobile originated and mobile terminated messages containing text that are sent and received to/by the Subscriber. Each Message sent that is longer than what can fit into one text message body (typically 160 characters), may be divided into multiple Text Messages and delivered separately. In such case, each Text Message in a divided series shall be considered a separate and distinct Text Message, and shall be charged accordingly. For example, if a Text Message contains 180 characters, then two (2) Text Messages shall be considered sent. Vanity Short Code: A specific Short Code that is dedicated and chosen by the Customer.