MASTER SERVICES AGREEMENT

This Master Services Agreement (this “**Agreement**”), effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2023 (the “**Effective Date**”), is by and between **Promethium, Inc.**,a Delaware corporation with principal offices located at 101 Jefferson Road, Suite 236, Menlo Park CA 94025 USA (“**Promethium**”) and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,** a \_\_\_\_\_\_\_\_\_\_\_ corporation with its principal offices located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Customer**”). Promethium and Customer may be referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

DEFINITIONS.

“**Affiliate**” means, with respect to a Party, any other person or entity, which controls, is controlled by, or is under common control with such Party where “**control**”means the possession, directly or indirectly, of the power to direct or cause the direction of management policies of such Party, person or entity, whether through ownership of a majority of the voting securities, by contract or otherwise.

**“Application Client”** means Promethium’s client Software to be installed on Customer’s premises or other Customer-controlled environments or systems as designated on the applicable Order Form through which Customer may integrate its Customer Data with the hosted Software and access the functions of the hosted Software to ensure that Customer Data used by Customer or its Authorized Users in connection with the Services including interactions with Customer data sources, which may involve the query function and metadata gathering, remains occurs securely behind Customer’s firewall, on Customer’s network/VPC.

“**Authorized User**” means any individual accessing or using the Software solely on behalf and for the benefit of Customer, and as authorized by Customer, in the operation of Customer’s internal business and for the benefit of Customer’s internal use in monitoring and assessing Customer’s internal control systems.

**“Channel Partner”** means a legal entity engaged by Promethium by contract to resell the Software and Service by license to end-user customers.

“**Customer Data**” means all data, including personal data, information, records and other content provided, transmitted, inputted, edited, authored, generated, managed, or otherwise submitted by Customer or its Authorized Users under this Agreement during the use of or in connection with the Services.

“**Documentation**” means text, graphical and help documentation, whether in electronic or printed format, that describes the features, functions and operation of the Software, that is designed to facilitate use of the Software and that Promethium makes accessible to Customer under the applicable Order Form.

“**Intellectual Property Rights**” means patent rights (including patent applications and invention disclosures), inventions, copyrights, trademarks, trade secrets, know-how, data and database rights, design rights, mask work rights, and any other intellectual property rights recognized throughout the world.

“**Order Form**” means a document executed by both parties that details the subscriptions purchased by Customer, including the subscription quantities, subscription start and end dates, associated fees, the Support Services, and other related details. If multiple Order Forms are executed related to this Agreement, each Order Form will each have a unique identification and each such Order Form will form a separate contract between the Parties. Customer may require a purchase order, which may take the place of an Order Form; references to Order Form also will be deemed to cover Customer purchase orders as required.

“**Promethium Technology**” means (i) Software; (ii) Promethium’s know-how, proprietary tools and data, trade secrets and other technologies made available via the Software or Services or otherwise used by or on behalf of Promethium to provide the Services; (iii) all improvements, modifications and derivative works of any of the foregoing; and (iv) all Intellectual Property Rights in the foregoing.

**“Services”** means the Promethium Technology accessible to Customer and its Authorized Users during the Subscription Term and the Support Services which are provided as part of the Subscription for the Subscription Term.

“**Software**” means (i) Promethium’s proprietary data navigation system, application software, and/or other software used to provide the Services that is hosted remotely by Promethium and made available for access and use by Customer as designated on an applicable Order Form (and/or purchase order); and (ii) Promethium’s proprietary Application Client software, including all updates and upgrades to the Software during the Subscription Term.

**“Subscription”** means the license to the Services granted to Customer and its Authorized Users for the Subscription Term.

“**Subscription Term”** means the ordering period during which the Services are available to Customer for use pursuant to the Order Form, generally one year or longer period, and generally renewable for additional time periods automatically.

**“Support Services”** means the support and maintenance services provided as part of the Subscription as a component of Services, for the Subscription Term, and which are provided in accordance with **Schedule A** hereto.

1. **SERVICES**

Performance of Services. Promethium grants to Customer and its Affiliates a non-exclusive, nontransferable (unless otherwise indicated herein), worldwide Subscription to the Services for the Subscription Term in accordance with the terms and conditions of this Agreement and an Order Form and/or Customer purchase order. For purposes of this Agreement, the term “Customer” shall include its Affiliates, unless the context requires otherwise, provided that Customer shall be entirely responsible for all payment and other obligations of its Affiliates and all Authorized Users of both Customer and its Affiliates, unless the Parties agree otherwise in writing. Customer will endeavor to list the names of its Affiliates in the Order Form which will also have access to the Services. From time to time, Promethium and Customer may execute statements of work (“**SOWs**”), that describe the specific services to be performed or made available by Promethium such as professional services. Each Order Form and any SOW will expressly refer to this Agreement, will form a part of this Agreement, and will be subject to the terms and conditions contained herein. An Order Form or SOW may be amended only by written agreement of the Parties.

Schedule. Other than with respect to the commencement date of any licenses or access rights to the Services or the Subscription Term, any schedule or date in an SOW that relates to Promethium’s performance under this Agreement is an estimate only and is not a commitment to a fixed date. Promethium will notify Customer if it is unable to meet a date specified in an Order or SOW, and Promethium will use reasonable efforts to meet any alternative date provided to Customer.

Access to Services. The Subscription provides Authorized Users with access to the hosted Software solely for internal use by Authorized Users for the benefit of, or in relation to, the operation of Customer’s business. As soon as reasonably practicable after configuration of the Application Client, Promethium will provide to Customer the necessary passwords and network links or connections to allow Customer and its Authorized Users to access the hosted Software and the Documentation. Customer will be responsible for all acts and omissions of its Authorized Users, and any act or omission by an Authorized User which would be a breach of this Agreement if undertaken by Customer will be deemed a breach of this Agreement by Customer.

Usage Restrictions. Customer will not, and will not permit any Authorized Users to: (i) copy or duplicate any of the hosted Software or Documentation; (ii) modify, alter, tamper with or repair any of the hosted Software or Documentation, or create any derivative work or product from any of the foregoing, or attempt to do any of the foregoing, except with the prior written consent of Promethium in each instance; (iii) interfere or attempt to interfere in any manner with the functionality or proper working of any of the hosted Software or Documentation; (iv) remove, obscure or alter any notice of any intellectual property or proprietary right appearing on or contained within the hosted Software or Documentation; (v) authorize or permit use of the hosted Software or Documentation by persons other than Authorized Users; (vi) use the hosted Software or Documentation or any other Confidential Information of Promethium for competitive analysis or benchmarking purposes, or to otherwise develop, commercialize, license or sell any product, service or technology that could, directly or indirectly, compete with the hosted Software, other Promethium Technology or the Services or (vii) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, the Promethium Technology. When using the hosted Software, Customer will further comply with the Documentation, and any best practices and industry specifications.

Suspension. Notwithstanding anything to the contrary in the Agreement, Promethium may terminate Customer’s and any Authorized User’s access to all or any portion of the Services if: Promethium reasonably determines that (i) there is a threat to or attack on any of the hosted Software; (ii) Customer’s or any Authorized User’s use of the hosted Software disrupts or poses a security risk to the hosted Software or any other customer or vendor of Promethium; (iii) Customer or any Authorized User is using the hosted Software for fraudulent or illegal activities; (iv) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or becomes the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding under any applicable law; or (v) Promethium’s provision of the hosted Software to Customer or any Authorized User is prohibited by applicable law. Promethium will make commercially reasonable efforts to provide written notice of any such Services suspension to Customer and to provide updates regarding resumption of access to the hosted Software following any Services suspension. Promethium will use commercially reasonable efforts to resume providing access to the hosted Software as soon as reasonably possible after the event giving rise to the Services suspension is cured, and will not be responsible for damages caused by a Services suspension.

Minimum Technical Requirements**.** Customer will bear sole responsibility for providing and ensuring that its computer hardware equipment owned or controlled by Customer (including equipment purchased by Customer from Promethium pursuant to a separate purchase order) conforms to specifications provided by Promethium in its installation guide, and that it provides and maintains computer systems, networks, telecommunications systems, Internet access, third party services, equipment, hardware, or any other materials or conditions required to meet the minimum technical requirements specified by Promethium to operate the Promethium Technology and Services. Promethium will have no liability under this Agreement for any damages arising, in whole or in part, from Customer’s non-compliance with the foregoing requirements.

Order Forms.Order Forms set out the Subscriptions purchased by Customer, including Subscription quantities, Subscription start and end dates, associated fees, and the Support Services, and possibly any professional services contracted by Customer, and other related details. An Order Form may also contain other terms or conditions, mutually agreed to by the Parties, which apply specifically to that particular order.

1. **FEES AND PAYMENT**.
	1. Fees. Customer will pay Promethium the fees, charges and expenses set forth in any Order Form, which fees will be invoiced in writing by Promethium to Customer annually in advance for any Subscription Term, unless otherwise indicated in the Order Form, or for certain professional services if applicable, and in any case payable to Promethium within thirty (30) days after the date of such invoice. The fees applicable to Customer under this Agreement are set forth in **Schedule B** attached hereto.
	2. Payments. All payments made under this Agreement to Promethium will be made in U.S. dollars by wire transfer or ACH of immediately available funds to a bank account designated by Promethium, or such other payment method mutually agreed by the Parties, and will be non-refundable. Any amounts due to Promethium hereunder and not paid when due will accrue late charges at the lesser of a rate of 1.5% per month or the highest rate permitted by applicable law. Customer will reimburse Promethium for all reasonable costs and expenses incurred (including reasonable attorneys’ fees) in collecting overdue amounts hereunder. Neither Party will have any right to set off, discount or otherwise reduce or refuse to pay any amounts due to the other Party under this Agreement for any reason. Customer must notify Promethium in writing of any dispute or disagreement with invoiced amounts within thirty (30) days after the date of invoice. Absent such notice, Customer will be deemed to have agreed to the invoiced amounts on expiration of the 30-day period.
	3. Taxes. All fees and other amounts payable under this Agreement are exclusive of all applicable sales, use, value-added and other taxes and all applicable export fees, customs duties, and similar charges. Customer will be responsible for payment of all such taxes (other than taxes based on Promethium’s income), fees, duties and charges, and any related penalties and interest, arising from the payment of any fees hereunder, the grant of license rights hereunder, or the provision of Services. Customer will make all payments to Promethium under this Agreement free and clear of, and without reduction for, any withholding taxes imposed by any country. Any taxes imposed on any payments to Promethium will be Customer’s sole responsibility and Customer will provide Promethium with official receipts issued by the appropriate taxing authority, or such other evidence as Promethium may reasonably request, to establish that those taxes have been paid.

PROPRIETARY RIGHTS.

Ownership of Promethium Technology. Except as set forth herein, and unless otherwise expressly agreed in the applicable Order Form, as between Promethium and Customer, Promethium is and will remain the sole owner of all right, title and interest in (including all Intellectual Property Rights) in and to all Promethium Technology.

Restriction on Promethium Technology. Customer will ensure that all proprietary rights notices on associated documentation or Promethium Technology are reproduced and applied to any copies. Customer agrees not to cause or permit the reverse engineering or disassembly of the Software or of any methods or tools used in the creation of the Promethium Technology, or any decompilation thereof except to the extent permitted by applicable law.

Customer Data. Customer retains ownership of all Customer Data. Promethium acknowledges and agrees that it shall not access or use any Customer Data other than in accordance with this Agreement or Customer’s written instructions.

Third Party Materials. The Services and Software may include, or may provide Customer with access to, software, source code, hardware or other technology licensed to Promethium from third parties, and which may be owned by such third parties (collectively, “**Third Party Materials**”). Customer acknowledges and agrees that Third Party Materials are provided solely on an “AS IS” basis, and that Promethium does not make any warranties or guarantees regarding Third Party Materials and is not responsible for the operation or failure of, or any errors or bugs in, any Third Party Materials; provided that Promethium will pass on any applicable warranties and guaranties from the third party provider of such Third Party Materials to the maximum extent permitted by such third parties.

Feedback. From time to time Customer may provide Promethium with suggestions, comments and feedback with regard to the Services, Software or other Promethium Technology (collectively, “**Feedback**”). Customer, hereby grants Promethium a perpetual, irrevocable, royalty-free and fully-paid up license to use and exploit all Feedback in connection with Promethium’s business purposes, including, without limitation, the testing, development, maintenance and improvement of the Services and Promethium Technology.

1. **CONFIDENTIAL INFORMATION**.
	1. Any information that one Party provides to the other Party during the Term that is identified at the time of disclosure as confidential or, given the circumstances of disclosure or the nature of the information, reasonably should be considered to be confidential will be “**Confidential Information**” of the disclosing Party (the “**Disclosing Party**”).For clarity, the Promethium Technology will be deemed the Confidential Information of Promethium hereunder.
	2. Each Party (the “**Receiving Party**”) will maintain the other Party’s Confidential Information in strict confidence, and will not use the Confidential Information of the Disclosing Party except as necessary to perform its obligations or enforce its rights under this Agreement. The Receiving Party will not disclose or cause to be disclosed any Confidential Information of the Disclosing Party, except to those Affiliates, employees, representatives, or contractors of the Receiving Party who have a bona fide need to know such Confidential Information to perform its obligations or exercise or enforce its rights under this Agreement and who are bound by written agreements with use and nondisclosure restrictions at least as protective as those set forth in this Agreement; or (ii) as such disclosure may be required by the order or requirement of a court, administrative agency or other governmental body, subject to the Receiving Party providing to the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or otherwise contest the disclosure.
	3. Nothing in this Agreement will prohibit or limit either Party’s use of information (i) rightfully known to it prior to receiving it from the Disclosing Party (as can be demonstrated by reasonable supporting evidence and written documentation); (ii) independently developed by or for it without use of or access to the other Party’s Confidential Information (as can be demonstrated by reasonable supporting evidence and written documentation); (iii) permissibly acquired by it from a third party which is not under an obligation of confidence with respect to such information (as can be demonstrated by reasonable supporting evidence and written documentation); or (iv) which is or becomes publicly available through no breach of this Agreement.
	4. Confidential Information shall remain subject to the terms of this Section 5 for period of five (5) years after the expiration or termination of this Agreement. Protection for any trade secrets will last as long as such information is a trade secret.
2. **REPRESENTATIONS AND WARRANTIES; OBLIGATIONS**.
	1. General. Each Party hereby represents and warrants to the other Party, as of the Effective Date, that:
		1. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof;
		2. Such Party has taken all necessary action on its part to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder, and has obtained all rights and consents necessary to grant the licenses set forth herein;
		3. This Agreement has been duly executed and delivered on behalf of such Party, and constitutes a legal, valid, binding obligation, enforceable against it in accordance with the terms hereof; and
		4. The execution and delivery of this Agreement by such Party does not conflict with any agreement or any provision thereof, or any instrument or understanding, oral or written, to which it is a party or by which it is bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over such Party.
	2. Warranty. Promethium warrants that: (i) the Software will substantially conform to the requirements and specifications for such Software in an applicable Order Form and (ii) the Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards, in each case at the time of delivery to Customer. This warranty will be in effect for a period of thirty (30) days from the delivery of any Software or Service. As Customer’s sole and exclusive remedy and Promethium’s entire liability for any breach of the foregoing warranty, Promethium will, at its sole option and expense, promptly re-perform any Services that fail to meet this limited warranty or refund to Customer the fees paid for the non-conforming Software or Services.
	3. Customer Warranty. Customer warrants that it will comply with all applicable laws relating to the collection, use, processing, security, and transfer of Customer Data, if any, that it provides to Promethium, including any data that alone or in combination can be used to identify an individual (“**Personal Data**”). To the extent that Customer (and any Authorized User), through or in connection with the use of the Software, collects, uses, stores, processes, and discloses data, including Personal Data, from any other user or third-party, Customer (and each Authorized User) hereby warrants that it shall accurately and adequately, and in full compliance with all applicable laws, obtain any necessary consent and make any required disclosure, either through a privacy policy or otherwise as dictated by applicable laws, with respect to how Customer (and each Authorized User) collects, uses, stores, processes and discloses data including, where applicable, that third parties may store, use, and process Customer Data while providing products and services to Customer.
	4. Customer Responsibilities. Customer will promptly cooperate with and assist Promethium, in order to optimize the Services during their performance. Customer will make available in a timely manner, at no charge to Promethium, all technical data, computer facilities, programs, files, documentation, test data, sample output, and other information and resources of Customer specified in any applicable Order Form or otherwise reasonably required by Promethium for the performance of the Services or any professional services requested. Customer will be responsible for, and assumes the risk of, any problems or delays resulting from, the content, accuracy, completeness and consistency of all data, materials and information supplied by Customer. Customer agrees that Promethium is not responsible for delays attributable to Customer and that any delay caused by Customer actions or omissions will automatically extend the time for Promethium’ performance of the Services.
	5. DISCLAIMER.
		1. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, THE PROMETHIUM TECHNOLOGY, AND ANY OTHER MATERIALS, SOFTWARE, DATA, HARDWARE, EQUIPMENT AND/OR SERVICES PROVIDED OR LICENSED BY PROMETHIUM ARE PROVIDED “AS IS” AND “WITH ALL FAULTS,” AND PROMETHIUM EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY INCLUDING, ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. PROMETHIUM MAKES NO WARRANTY, AND EXPRESSLY DISCLAIMS ANY WARRANTY, THAT IS BASED ON TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. PROMETHIUM DOES NOT WARRANT THAT THE SERVICES, THE SOFTWARE, SAAS OR ANY OTHER INFORMATION OR MATERIALS WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. Customer shall look only to the manufacturer of any third-party hardware or other equipment it procures, as applicable, for any claims, problems, demands and issues with or relating to the hardware and other equipment.
		2. Promethium will have no responsibility to review information posted by Customer or its Authorized Users, or for any data processing instructions it undertakes at the direction of Customer. Promethium will have no liability as to the accuracy of any content posted by Customer or its Authorized Users. CUSTOMER ACKNOWLEDGES THAT IT IS SOLELY RESPONSIBLE FOR ANY CUSTOMER DATA THAT CUSTOMER CHOOSES TO MAKE PUBLIC OR AVAILABLE TO THIRD PARTIES OR THAT IT INSTRUCTS PROMETHIUM TO PROCESS OR MAKE AVAILABLE TO THIRD PARTIES, INCLUDING FOR ENSURING SUCH DATA HAS BEEN COLLECTED, USED, TRANSFERRED AND DISCLOSED IN FULL COMPLIANCE WITH ALL APPLICABLE LAWS AND CUSTOMER’S PRIVACY POLICY AND/OR OTHER DISCLOSURES RELATING TO THE COLLECTION, USE, TRANSFER, SECURITY AND DISCLOSURE OF CUSTOMER DATA. CUSTOMER HEREBY RELEASES PROMETHIUM FROM ALL LIABILITY RELATED TO SUCH DISCLOSURES.
3. **INDEMNIFICATION**.
	1. Promethium Indemnification. Subject to Section 7(c), Promethium will defend, indemnify and hold Customer and its Affiliates (together with their respective officers, directors, employees and agents) (the “**Customer Indemnified Parties**”) harmless from and against any and all damages, losses, liabilities and expenses (including reasonable attorneys’ fees) (“**Damages**”) arising from any claim by a third party to the extent arising from Promethium’s (or any of its Affiliates’) fraud or intentional misconduct in the performance of the Services under this Agreement, or alleging that the Software or Services infringe, misappropriate or otherwise violate any Intellectual Property Rights of a third party except to the extent such underlying third party claim or Damages arise from or as a result of (A) any use of Software or Services by or on behalf of Customer that is not authorized under this Agreement or done pursuant to Promethium’s written instructions, (B) modification of any Software or Services by any Person other than Promethium, (C) the combination, operation or use of any of the Software or Services with any other software, hardware, data or technology not provided by Promethium, (D) any Customer Data, (E) any changes made to Software or Services created by Promethium in compliance with specifications or instructions provided by Customer, or (F) failure to install the latest updated version of Software as directed by Promethium.
	2. Customer Indemnification. Subject to Section 7(c), Customer will defend, indemnify and hold Promethium and its Affiliates (together with their respective officers, directors, employees and agents) (the “**Promethium Indemnified Parties**”) harmless from any and all Damages arising from any claim by a third party to the extent arising from (i) Customer’s or any of its Affiliates’ fraud or intentional misconduct in connection with the receipt of the Services under this Agreement; or (ii) Promethium’s use and receipt of Customer Data in accordance with the Agreement.
	3. Indemnification Procedures.
		1. The Party seeking indemnification under ‎Sections 7(a) or 7(b), as applicable, (the “**IndemnifiedParty**”) will give prompt notice in writing to the Party against whom indemnity is sought (the “**Indemnifying Party**”) of the assertion of any claim or the commencement of any action by any third party (“**Third Party Claim**”) in respect of which indemnity may be sought under such Section. Such notice will set forth in reasonable detail such Third Party Claim and the basis for indemnification (taking into account the information then available to the Indemnified Party). The failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure has actually and materially prejudiced the Indemnifying Party.
		2. The Indemnifying Party will be entitled to participate in the defense of any Third Party Claim and, subject to the limitations set forth in this Section, will be entitled to control and appoint lead counsel for such defense, in each case at its own expense; provided that prior to assuming control of such defense, the Indemnifying Party must acknowledge in writing that it would have an indemnity obligation for the Damages resulting from such Third Party Claim as provided under this ‎Section 7.
		3. The Indemnifying Party will not be entitled to assume or maintain control of the defense of any Third Party Claim if (A) the Indemnifying Party does not timely deliver the acknowledgment referred to in ‎Section 7(c)(ii); (B) the Third Party Claim relates to or arises in connection with any criminal action or investigation; or (C) the Third Party Claim seeks an injunction or equitable relief against the Indemnified Party or any of its Affiliates.
		4. If the Indemnifying Party will assume the control of the defense of any Third Party Claim in accordance with the provisions of this ‎Section 7(c), the Indemnifying Party will obtain the prior written consent of the Indemnified Party before entering into any settlement of such Third Party Claim.
		5. In circumstances where the Indemnifying Party is controlling the defense of a Third Party Claim in accordance with paragraphs (ii) and/or (iii) above, the Indemnified Party will be entitled to participate in the defense of any Third Party Claim and to employ separate counsel of its choice for such purpose, in which case the fees and expenses of such separate counsel will be borne by the Indemnified Party.
		6. Each Party will cooperate, and cause their respective Affiliates to cooperate, in the defense or prosecution of any Third Party Claim and will furnish or cause to be furnished such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials or appeals, as may be reasonably requested in connection therewith. Each Indemnified Party will take commercially reasonable steps to mitigate any Damages upon becoming aware of any fact, matter, event or circumstance that could give rise to a Third Party Claim.
	4. IP Remedies. If Promethium reasonably believes the Software or Services could infringe any third-party Intellectual Property Rights, Promethium may, at its sole option and expense use commercially reasonable efforts to: (i) procure the right for Customer to continue using the Software or Services, as applicable (or any infringing component thereof) to make it non-infringing without materially reducing its functionality; or (ii) replace the Software or Services (or any infringing component thereof) with a non-infringing alternative that is functionally equivalent in all material respects. If the foregoing remedies are not available to Promethium on commercially reasonable terms, then Promethium may suspend or terminate Customer’s use of the Software or Services upon notice to Customer, and upon any such termination, Promethium will promptly refund to Customer the pro-rata portion of unused, prepaid fees for such Software or Services once the Software or Services are destroyed or returned, as applicable. The rights and remedies set forth in this Section 7 shall constitute the Customer’s sole and exclusive remedy for any infringement or misappropriation of Intellectual Property Rights by the Software or Services.
4. **LIMITATIONS OF LIABILITY.**
	1. Exclusion of Damages. EXCEPT FOR A BREACH OF SECTION 5 (CONFIDENTIAL INFORMATION) OR EITHER PARTY’S OBLIGATIONS UNDER SECTION 7 (INDEMNIFICATION) (I) IN NO EVENT WILL PROMETHIUM BE LIABLE TO CUSTOMER OR ITS AUTHORIZED USERS FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA, EVEN IF PROMETHIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) THE CUMULATIVE LIABILITY OF PROMETHIUM FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR STRICT LIABILITY, WILL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES THEN PAID TO PROMETHIUM BY CUSTOMER DURING THE 12-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH LIABILITY, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
	2. Basis of the Bargain. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 8 ARE AN ESSENTIAL PART OF THE BASIS OF THE BARGAIN BETWEEN PROMETHIUM AND CUSTOMER, AND WILL APPLY EVEN IF THE REMEDIES AVAILABLE HEREUNDER ARE FOUND TO FAIL THEIR ESSENTIAL PURPOSE.
5. **TERM AND TERMINATION**.
	1. Term. The term of this Agreement begins on the Effective Date and will remain in force and effect until the later of: (i) its termination in accordance with this Agreement, or (ii) six (6) months after the last Order Form under this Agreement has been completed, expired or been terminated in accordance with its terms or this Agreement (the “**Term**”).
	2. Term of Individual Order Form. The term of each Order Form will commence on the date set forth therein and will continue for the period set forth therein; terms for licenses of the Services continue for the Subscription Term stated in the Order Form. If no term is stated in an Order Form, the term will continue until the Services contemplated by such SOW are complete, unless earlier terminated in accordance with this Agreement or the applicable Order Form. Termination or expiration of one Order Form will have no effect on any other Order Form.
	3. Termination for Convenience. If there is no active Order Form in effect under this Agreement, either Party may terminate this Agreement upon thirty (30) days’ prior written notice to the other Party.
	4. Termination for Cause. Without limiting any right or remedy available to either Party, either Party may terminate this Agreement effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice detailing the nature of such breach.
	5. Survival. Sections 3, 4, 5, 6(a), 7, 8, 9(e)-(f) and 11 survive any termination or expiration of this Agreement in accordance with their respective terms.
	6. Effect of Termination. Upon expiration or termination of this Agreement: (i) the rights and licenses granted to Customer hereunder will terminate automatically except to the extent such rights are expressly stated to survive beyond the Term; (ii) Customer will return or destroy, at Promethium’s sole option, all Promethium Technology and other Promethium Confidential Information in its possession or control, including permanent removal of such Promethium Technology and Confidential Information (consistent with customary industry practice for data destruction) from any storage devices or other hosting environments that are in Customer’s possession or under Customer’s control, and at Promethium’s request, Customer will certify in writing to Promethium its compliance with the provisions of this Section 9(e); and (iii) for clarity, Customer will pay all previously accrued amounts due to Promethium hereunder in accordance with the Section 3. Promethium will return any Customer Confidential Information in its possession in accordance with Customer’s instructions.
6. **TRADEMARKS**. Customer hereby grants Promethium a limited, non-exclusive, royalty-free license to use and display Customer’s name, designated trademarks and associated logos (the “**Customer Marks**”) during the Term with respect to (i) the provision of the Services; and (ii) Promethium’s marketing and promotional efforts for its products and services, including naming Customer as a customer of Promethium. All goodwill generated by any Promethium use of the Customer Marks inures to the exclusive benefit of Customer. Promethium will use the Customer Marks in the form stipulated by the Customer and will conform to and observe such standards as the Customer prescribes from time to time.
7. **MISCELLANEOUS**.
	1. Entire Agreement. This Agreement, together with any Order Forms and any other documents incorporated herein by reference and all related Exhibits, Appendices, Addendums and Schedules, 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, and representations and warranties, both written and oral, with respect to such subject matter.
	2. Notices. Except as otherwise expressly permitted herein, all notices required or permitted to be given hereunder will be in writing and will be deemed effective when personally delivered, when received by electronic mail to the address listed below (with no bounce-back message received, and with a subsequent notice delivered another of the listed options), when delivered by overnight courier or five (5) days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to Promethium: Promethium, Inc.

 101 Jefferson Road

 Suite 236

 Menlo Park CA 94025

 Attention: Legal

kaycee@pm61data.com

If to Customer: Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

or to such other address or number, and to the attention of such other person or officer, as any Party may designate, at any time, in writing in conformity with these notice provisions.

* 1. Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
	2. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties will negotiate in good faith to modify this Agreement to effect their original intent as closely as possible.
	3. Governing Law; Venue; Arbitration. This Agreement, and any arbitration pursuant to this Section, will be governed by and interpreted in accordance with the laws applicable in the State of California, without regard to its conflicts of law principles or to the United Nations Convention on the International Sale of Goods. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by final and binding arbitration administered by JAMS in San Francisco, California, USA before: (a) one arbitrator if the amount of the claim(s) is less than One Million Dollars ($1,000,000); or (b) three (3) arbitrators if the amount of the claim is equal to or greater than One Million Dollars ($1,000,000) (with each party choosing one arbitrator and the two arbitrators selected choosing the third arbitrator). The arbitration shall be administered by JAMS pursuant to the following JAMS Rules: (i) if both Parties to the Agreement are based in the United States (even if one has a parent company located outside the United States): (A) if the amount of the claim(s) is less than $1,000,000, the JAMS Streamlined Arbitration Rules and Procedures, or (B) if the amount of the claim(s) is equal to or greater than $1,000,000, the JAMS Comprehensive Arbitration Rules and Procedures; and (ii) if one of the Parties to the Agreement is based outside the United States, the JAMS International Arbitration Rules and Procedures. Judgment on the arbitral award may be entered in any court having jurisdiction thereof. This Section shall not preclude Parties from seeking provisional/equitable remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitration panel shall, in the arbitral award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator(s) and reasonable attorneys’ fees (and accountant’s fees) of the prevailing Party, for payment by the non-prevailing Party, and shall determine the prevailing Party for this purpose.
	4. Assignment. Neither Party may assign or transfer this Agreement, in whole or in part, without the other Party’s express prior consent. Notwithstanding the foregoing, either Party may assign this Agreement without consent (i) to an Affiliate; (ii) to a surviving entity in case of merger, acquisition or sale of all or substantially all its shares or the assets to which this Agreement relates or (iii) to a successor entity pursuant to an internal reorganization or entity conversion; provided that any such assignee agrees in writing to be bound by all t obligations of the assigning Party under this Agreement. Any attempt to assign or transfer this Agreement, in contravention of the foregoing will be null and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each Party’s permitted successors and assigns.
	5. Force Majeure. Neither Party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, denial of service or other malicious attacks, communications failure or degradation, ordinary course mechanical or electrical degradation and/or failure, material changes in law, war, terrorism, riot, or acts of God.
	6. Subcontracting. Promethium may use subcontractors, vendors and other third-party providers for the performance of its obligations hereunder as it deems appropriate, provided that the Promethium remains responsible for the performance of each such subcontractor, vendor or third-party provider and its compliance with the terms of this Agreement.
	7. Export. Customer will ensure that its use of the Software and the Documentation complies in all respects with all applicable laws, statutes, regulations, ordinances and rules promulgated by governing authorities having jurisdiction over the Parties, the Software or Documentation including, without limitation, export control laws and compliance with sanctions regulations promulgated by the U.S. Bureau of Industry and Security, U.S. Office of Foreign Assets Control, or any other agency or department of the federal government of the United States. Customer will not export, reexport or otherwise transfer the Software or related technology except in compliance with such laws and any applicable laws where the Software is used by Customer and its Authorized Users.
	8. Customer’s Purchase Order. Any terms or conditions in Customer’s purchase order or any other related documentation submitted by or on behalf of Customer to Promethium do not form part of this Agreement and are void, unless otherwise expressly agreed in writing and signed by the Parties.
	9. Arm’s-Length Transaction; Independent Contractors. The Parties hereby acknowledge and agree that (i) this Agreement and all of the services, obligations and activities set forth herein or contemplated hereby, is an arm’s-length commercial transaction; and (ii) the Parties are independent contractors, and no Party will by virtue of this Agreement be deemed to be the representative, employee, franchisee or agent of the other Party for any purpose whatsoever.
	10. No Third-Party Beneficiaries. Subject to Section 7, no provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any person or entity other than the Parties and their respective successors and assigns.
	11. Interpretation and Precedence. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement. In the event that any provision set forth in an Order Form conflicts with any provision of the main body of this Agreement, the following rules of precedence shall apply: (i) the Order Form shall take precedence over the body of the Agreement, absent manifest error; and (ii) any legal provision of this Agreement will supersede and control the other documents to the extent of such conflict, except to the extent that specific language in an Order Form expressly states that it supersedes particular language in this Agreement.
	12. Counterparts. This Agreement may be executed in counterparts, manually or by e-signatures, each of which is deemed an original, but all of which together are deemed to be one and the same agreement; and counterparts transmitted as PDF documents sent by email shall be deemed to be originals.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

|  |  |
| --- | --- |
|  | **Promethium, Inc.** |
| By: |  |
| Name: |  |
| Title: |  |

|  |  |
| --- | --- |
|  | **Customer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| By: |  |
| Name: |  |
| Title: |  |

**SCHEDULE A**

**MAINTENANCE AND SUPPORT ADDENDUM**

This **MAINTENANCE AND SUPPORT ADDENDUM** (the “**Addendum**”) is an Addendum to the Local Software Terms, and is hereby incorporated into the Master Services Agreement between Promethium and Customer (collectively, the “**Agreement**”) to the extent that Local Software is designated to be made available to Customer on any applicable Order Form.

**1. Customer Support.**

* 1. **Definitions**

**1.1.1 “Business Day”**means Monday through Friday in the United States, excluding U.S. federal holidays.

**1.1.2 “Error”**means a failure of the Services to perform as substantially as described in the Documentation.

**1.1.3 “Issue”**means an Error that is classified as “Priority 1”, “Priority 2”, “Priority 3”, or “Priority 4”.

**1.1.4 “Workaround”**mean a solution or resolution that provides materially equivalent functionality while an Issue is being addressed. The workaround may involve a reasonable number of additional steps by the Authorized User to achieve the same result.

* 1. **Support Access Methods**

Support contacts may request Promethium support via telephone or electronic mail as indicated below To enable Promethium to meet its response time commitments to Customer, Customer must provide certain information in all communications regarding Issues.

|  |  |
| --- | --- |
| **FORM OF SUPPORT** | **AVAILABILITY** |
| Telephone Support\*  | 9 am to 5pm PT |
| Email Support\*  | 24 x 7 x 365 at support@pm61data.com |

For new Issues, Customer must provide the following information:

1.  Customer account name

2.  Authorized User name that the Authorized User uses to access the Services.

3.  Results of any troubleshooting measures Customer may have already undertaken, and a list of steps that can be followed to reproduce the issue.

4.  As many other details about the issue as possible, including any co-existing issues and any recent updates or changes that may have been made to the network/system or infrastructure.

For subsequent communications about existing Issues, Customer must provide the following information:

1.  Customer’s previously assigned case ID and priority level.

2.  Any additional details about the Issue since Customer was last in contact with the Promethium support resources.

**1.3 Response Times**

If Customer encounters an Issue, Customer may contact Promethium’s Support Services personnel as set forth above. Promethium will respond to reported Issues as described in subsection (3.4), below, commencing when Promethium actually receives Customer’s notice of the Issue (i.e., leaving a message that Promethium does not receive does not mean that the response time calculation has commenced).

**1.4 Priority Levels and Priority Response and Resolution Target Matrix**

During case creation, a Promethium technical support representative will assign a priority level, based on the standards described below**.**

**Priority Levels**

***Priority 1*:** The case reveals a defect that results in the termination of one or more components of the Software or causes corruption of data. There is no acceptable alternative method to achieve the required results.

***Priority 2*:** The case reveals a defect that results in the degradation of one or more components of the Software or causes corruption of data. There exists an acceptable alternative method to achieve the required results or the affected Software is not part of a production system.

***Priority 3*:** The case reveals a defect that causes the Software to produce incorrect, incomplete, or inconsistent results. The problem impairs some Software functions or causes the Software to produce incorrect, incomplete or inconsistent results but the desired results can be obtained without difficulty by working around the defects.

***Priority 4*:** The case involves an information request or description of a minor defect or enhancement that does not affect the expected function of the Software.

**Response Times per Priority Level**

|  |  |  |  |
| --- | --- | --- | --- |
| **Priority**  | **Initial Response** | **Follow-up** | **Resolution Target** |
| **Priority 1** | 1 Hour | 4 Business Hours | 3 Business Days |
| **Priority 2** | 2 Hours | 1 Business Day | 5 Business Days |
| **Priority 3** | 4 Hours | 2 Business Days | Maintenance Release |
| **Priority 4** | 4 Hours | 5 Business Days | Maintenance Release |

Following Issue notification from Customer, Promethium will use commercially best efforts to identify a temporary fix, work-around or patch to address P1 or P2 issues until such Issues are addressed. Addressing an Issue means that the Issue is either fully solved or the issue is fixed so that it can be de-escalated to a lower priority status (e.g. P2 to P4). Promethium may use any resolution method available (i.e. fixes, workarounds, etc.) to resolve an Issue. Each support request is assigned a case number and the issue is prioritized according to the above matrix.

A case will be closed when a Customer’s inquiry is resolved. A resolution is typically one of the following: an answer to the question, a suggestion on how to perform a particular task or an acceptable workaround to a Software Issue. Customers will be notified of case closures, and this closure notification will always be done via email, to the email address on record. A case can be re-opened at any time at a Customer’s request, if further investigation is required. A new priority level may be assigned at such time.

**1.5 What Is Not Included Within Support Services**

**1.5.1 Installation.**Assistance with the installation and configuration of third-party hardware or software. Promethium does not provide these services.

**1.5.2 Assistance to Customers not in good standing.**Access to Promethium support resources and Promethium’s obligations under this Policy are available only to customers whose accounts are in good standing with Promethium