appzen

MASTER SERVICES AGREEMENT

This Master Services Agreement ("**MSA**") is entered into as of the later date in the signature block below ("**Effective Date**"), by and between AppZen, Inc. ("**AppZen**"), with offices at 6201 America Center Dr., Suite 300, San Jose, CA 95002, and the entity signing below or otherwise executing a Sales Order Form referencing this Agreement ("**Customer**").

1.   DOCUMENTS COMPRISING THE AGREEMENT

The "Agreement" shall consist of the terms and conditions set forth in this MSA together with any exhibits attached hereto and any Sales Order Forms (as defined in the attached Exhibit A), items attached to/linked in or otherwise referenced in Sales Order Forms, and other documents that either incorporate this MSA by reference or are incorporated herein by reference (including, without limitation, the Service Description Guide, the list of subprocessors, and the DPA).

2.   INITIAL TERM

The term of the Agreement will commence on the Effective Date defined below and will extend throughout the period of any active Sales Order Forms. The initial term, based on the agreed Sales Order Form, will be as set forth in such Sales Order Form, subject to variation by addition of subsequent Sales Order Forms and/or other renewals, extensions, or amendments as may be agreed upon and executed by the parties.

3.   EXECUTION

This Agreement will come into force between the parties either upon the signature of both parties as set forth below, or upon the parties' execution of a Sales Order Form referencing this MSA. The Effective Date will be earlier of the date last signed below, or the date of execution of a Sales Order Form referencing this Agreement (the "Effective Date") by the parties hereto each acting under due and proper authority.

<u>**ACKNOWLEGED AND AGREED**</u>:

AppZen, Inc.	Customer Company Name:
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:
Notice: legalnotices@appzen.com	Notice:
Address: *See Above*	Address:

<u>**Attachment:**</u>
Exhibit A – General Terms and Conditions
Exhibit B – Definitions
Exhibit C – Product and Service Guide in effect, as may be amended by AppZen from time to time.

EXHIBIT A
GENERAL TERMS AND CONDITIONS

This Exhibit is made as of the Effective Date and pertains to and is made a part of the Master Services Agreement between AppZen and Customer (the "MSA"). All undefined capitalized terms herein shall have the meanings ascribed to such terms as set forth in the Agreement. If any terms of this Exhibit are inconsistent with any of terms of other elements of the MSA (including other exhibits, Sales Order Forms, or materials incorporated by reference herein), the terms of this Exhibit shall control.

1. PROVISION OF SERVICES

1.1 **Provision of the Subscription Service**. Subject to Customer's payment of the fees set forth in the Sales Order Form, AppZen will provide the Subscription Service via an online user interface specified in the Documentation, and/or will provide any additional Service as set forth in the applicable Sales Order Form. On or before the Order Start Date, AppZen will provide to Customer the necessary Access Protocols to allow Customer and its Authorized Users to access the Subscription Service. Customer may permit Authorized Users to access and use the features and functions of the Subscription Service as contemplated by this Agreement. AppZen will, at its expense, host the Subscription Service on servers operated and maintained by or at the direction of AppZen. AppZen may in its discretion, but is not required to, provide new releases and updates to the Subscription Service (not including any specific features or functionalities implemented only for specific customers or for separate fees) in the same manner that it generally provides to its other customers, provided that AppZen will not be obligated to provide to Customer any new release or update to the Subscription Service, or any module thereof, for which AppZen generally charges a separate fee. AppZen assumes no obligation to provide additional features or functionality to any portion of the Services absent an express written agreement (which may be set forth in a Sales Order Form) for provision of such additional features or functionality.

1.2 **Restrictions**. With respect to the Subscription Service, Customer will not (and will not permit others to): (a) use it in excess of contractual usage limits (including as set forth in a Sales Order Form), or in a manner that circumvents usage limits or technological access control measures; (b) license, sub-license, sell, resell, rent, lease, transfer, distribute, time share, or otherwise make any of it available for access by third-parties, except as may otherwise be expressly stated in a Sales Order Form; (c) access it for the purpose of developing or operating products or services for third-parties in competition with the Subscription Service or AppZen; (d) disassemble, reverse engineer, or decompile it; (e) copy, create derivative works based on, or otherwise modify it, except as provided by law, in which case Customer will provide prior written notice to AppZen before taking such action; (f) remove or modify a copyright or other proprietary rights notice in it; (g) use it to reproduce, distribute, display, transmit, or use material protected by copyright or other Intellectual Property Right (including the rights of publicity) without first obtaining permission of the owner; (h) use it to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or otherwise engage in a malicious act or disrupt its security, integrity, or operation; or (i) access or disable any AppZen or third-party data, software, or network (other than Customer's instance of the Subscription Service under this Agreement).

1.3 **Data Security**. AppZen will maintain and enforce an information security program including administrative, physical and technical security policies and procedures with respect to its processing of Raw Data under this Agreement

(a) *Breach Notification*. AppZen will promptly without undue delay notify Customer in the event of an unauthorized access or disclosure of Raw Data. AppZen will not notify, for or on behalf of Customer (or any Authorized User), any regulatory authority, consumer or other person of unauthorized access or disclosure to Raw Data unless Customer explicitly requests in writing that AppZen do so.

(b) *Security Standards*. AppZen is certified as ISO27001:2013 and SSAE 18, Type 2 SOC 2 compliant as of the Effective Date and will remain certified to these or equivalent or greater standards (the "**ISMS Standards**") throughout the term of this Agreement. Upon Customer's written request, AppZen will provide its certificate of registration which states its conformance with the requirements of ISO 27001:2013 and independent auditor's

summary report of AppZen's controls under a Type 2 SOC 2 examination. AppZen will maintain appropriate administrative, physical and technical safeguards according to the ISMS Standards. These safeguards will include, but not be limited to, measures designed to prevent unauthorized access to or disclosure of Raw Data.

> **(c)** *Standard Contractual Clauses*. AppZen acknowledges that it may receive or have access to Personal Data provided by Authorized Users during the term of this Agreement. To the extent Personal Data from the European Economic Area (EEA), the United Kingdom or Switzerland are processed by AppZen, the Standard Contractual Clauses will apply, as further set forth in the DPA. Where the Standard Contractual Clauses are applicable, Customer is the data exporter, and Customer's acceptance of this Agreement and execution of a Sales Order Form, will be treated as its execution of the DPA and AppZen is the data importer, and AppZen's acceptance of this Agreement and execution of a Sales Order Form, will be treated as its execution of the DPA.

1.4   Provision of Implementation Service and Support Service. Subject to Customer's payment of implementation service fees set forth in the Sales Order Form, AppZen will help Customer input its Raw Data into the Subscription Service, configure the learning algorithm in the Subscription Service to learn Customer's risk parameters, and provide other services pursuant to a mutually agreed upon Sales Order Form. Customer will provide all necessary assistance, including but not limited to any required integration elements such as APIs and any technical support, as reasonably required to implement the Subscription Service for Customer. Subject to Customer's payment of applicable support fees stated on the Sales Order Form, AppZen will provide Customer with the support service in accordance with the Support Data Sheet referenced in the Sales Order Form.

1.5   Service Level Terms. The service shall be available for an uptime percentage of at least 99.9%, measured monthly, excluding holidays and weekends and scheduled maintenance according to AppZen's then-current policies and schedules. If Customer requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, any downtime resulting from outages of third party connections or utilities or other reasons beyond AppZen's control will also be excluded from any such calculation. Customer's sole and exclusive remedy, and AppZen's entire liability, in connection with service availability shall be that for each period of downtime lasting longer than one hour, AppZen will credit Customer 5% of the applicable monthly fees for each period of 60 or more consecutive minutes of downtime; provided that no more than one such credit will accrue per day. Customer may subscribe to AppZen's email notification feed for alerts on downtime or may notify AppZen of any outages that it recognizes. For calculation purposes, downtime will be defined as periods in which all AppZen services are unavailable, and will begin to accrue as soon as Customer (with notice to AppZen) recognizes that downtime is taking place, and continues until the availability of the Service is restored. In order to receive downtime credit, Customer must notify AppZen in writing within 24 hours from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit. Any credits will be applied to Customer's next payment for services, which will be the sole form in which such credits will be granted (no refunds or other cash payments will be issued for any such credits) The total amount of credit for downtime will not exceed one (1) week's worth of applicable fees in any given one (1) calendar month in any event.

1.6   Subprocessors and Subcontractors. AppZen will use subprocessors to provide the Subscription Services, with particular subprocessors and roles as set forth at https://www.appzen.com/privacy/subprocess, as may be updated from time to time, and Customer hereby authorizes AppZen's use of such subprocessors and the use of any additional subprocessors as AppZen may designate during the term of any Sales Order Form. AppZen may also use subcontractors to assist in implementation, integration, or other work in connection with delivery of the Services, and Customer hereby authorizes AppZen's use of such subcontractors as AppZen deems appropriate.

2.   CUSTOMER OBLIGATIONS
2.1   Responsibilities of Customer. Customer will be responsible for obtaining and maintaining, at Customer's expense, all of the necessary telecommunications, computer hardware, software, and Internet connectivity required by Customer or any Authorized User to access the Subscription Service from the Internet, as well as for enabling integration with any systems used by Customer as required for the operation of the Subscription Service. Customer and its Authorized Users will have access to the Raw Data and will be responsible for all changes to and/or deletions of Raw Data. Customer will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Subscription Service, safeguard the Access Protocols, and notify AppZen promptly of any such unauthorized use known to Customer. Customer will have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Raw Data. Customer acknowledges and agrees that the Subscription Service will not be used, and is not licensed for use, in connection with any of Customer's time-critical or mission-critical functions. Customer represents and warrants that any Raw Data submitted to the Subscription Service will not (a) infringe or misappropriate any Intellectual Property Rights of any person; (b) be deceptive, defamatory, obscene, or unlawful; or (c) contain any viruses, worms or other malicious computer programming codes intended to damage AppZen's systems or data.

AppZen will have the right to review and monitor all use of the Subscription Service to ensure compliance with the terms and conditions of this Agreement.

(a)   *PHI Data under HIPAA*. Customer will not include in Raw Data any PHI unless Customer has entered into a Sales Order Form that explicitly permits Customer to process PHI in the Subscription Service and a Business Associate Agreement with AppZen, which upon mutual execution, will be incorporated by reference into and subject to this Agreement. "**PHI**" means personal health information regulated by the Health Insurance Portability and Accountability Act of 1996.

(b)   *Cardholder Data under PCI-DSS*. Customer will not include in Raw Data any cardholder data as defined under the Payment Card Industry Data Security Standard.

2.2   Raw Data and Trademarks. Customer grants AppZen a non-exclusive, worldwide, royalty-free and fully paid license (a) to use the Raw Data as necessary for purposes of providing the Services and enabling the operation of the Subscription Service, and Customer directs AppZen to use the Raw Data (as well as any other data in which Customer has an interest that is exchanged pursuant to this Agreement) as set forth in and/or permitted by this Agreement, and (b) to use the Customer's trademarks, service marks, and logos ("**Trademarks**") as required to provide the Services. The Raw Data and Customer's Trademarks and all worldwide Intellectual Property Rights therein, as between AppZen and Customer, are the exclusive property of Customer. All rights in and to the Raw Data and Trademarks not expressly granted to AppZen in this Agreement are reserved by Customer.

2.3   Compliance with Applicable Laws. Customer represents and warrants: (A) that its use of the Subscription Service will comply with Applicable Laws; (B) Raw Data will not contain (i) any data for which Customer does not have all rights, power, and authority necessary for its collection, use, and Processing as contemplated by this Agreement; or (ii) any data with respect to which Customer's usage as contemplated herein would violate Applicable Laws; (C) AppZen's processing of Raw Data as directed pursuant to this Agreement will not cause AppZen to violate Applicable Laws; and (D) Customer has all rights necessary to enable AppZen to integrate with any systems designated by Customer in the course of implementation of the Subscription Service for Customer, and Customer grants AppZen all necessary rights for enabling and/or implementing such integration, implementation, and subsequent operation, of the Subscription Service with Customer's designated systems during the term of any outstanding Sales Order Form.

3.   INTELLECTUAL PROPERTY

3.1   License Grant to Customer. Subject to the terms and conditions of this Agreement, AppZen grants to Customer a limited, non-exclusive, non-transferable (except as set forth in Section 11.7), worldwide license during the term of this Agreement, without the right to sublicense, solely for Customer's internal business purposes, (a) to access, use, perform, and digitally display the Subscription Service in accordance with the Documentation; and (b) to use and download a reasonable number of copies of the Documentation.

3.2   Ownership of the Services. The Services and all worldwide Intellectual Property Rights in each of the foregoing including any updates, upgrades, improvements, configurations, extensions, and derivative works of the Services or data processed therein developed during the term of this Agreement or otherwise, as well as any other Intellectual Property Rights in any other materials developed by AppZen as a result of or in relation to any Services delivered and/or data generated by use of the Services, are the exclusive property of AppZen and/or its suppliers as applicable. All rights in and to the Services not expressly granted to Customer in this Agreement are reserved. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Services, or any part thereof.

3.3   Output Values; Usage Data; Aggregated Data; Customer Feedback.

(a)   *Output Values*. In the course of using the Subscription Service, certain Output Values will be created by the Subscription Service. For the avoidance of doubt, AppZen owns all the Intellectual Property Rights in the Output Values and the underlying Intellectual Property Rights in the technology used to generate such Output Values. AppZen grants to Customer a non-exclusive, royalty-free, non-transferable (except as set forth in Section 11.7 (Assignment)), non-sublicensable worldwide license to use the Output Values in connection with the Subscription Service as contemplated under this Agreement during the applicable Subscription Term. For the avoidance of doubt, in the event that Customer is deemed to have any interest of any kind in any Output Values or other material generated in the course of performance of the Services, Customer agrees to assign, and does assign, any and all such interest to

AppZen. Nothing in this Agreement will be deemed to restrict or limit AppZen's right to perform similar services for any other party or to assign any employees or subcontractors to perform similar services for any other party or to use any information incidentally retained in the unaided memories of its employees providing Services.

(b) *Usage Data; Aggregated Data*. Pursuant to Section 2.2, Customer agrees that to the extent that AppZen may deem it appropriate to do so, AppZen may, and is directed to, input Raw Data into the AppZen machine learning algorithms ("**MLA**") to enable AppZen to provide the Subscription Service to Customer and to improve the MLA. Furthermore, to the extent that AppZen may deem it appropriate to do so, Customer agrees that AppZen may, and is directed to, use Customer's Raw Data in a de-identified format in combination with other customers' de-identified Raw Data ("**Aggregated Data**") to provide the Subscription Service to Customer and AppZen's other customers and to improve the MLA for all customers. Customer further agrees that to the extent that AppZen may deem it appropriate to do so, AppZen may, and is directed to (during and after the term of this Agreement): (i) use Usage Data and Aggregated Data to improve and enhance the Subscription Service or other AppZen offerings, and for other development, diagnostic, and corrective purposes in connection with the Subscription Service and any other AppZen offerings, and (ii) disclose Usage Data and Aggregated Data only in de-identified form in connection with its business. "**Usage Data**" means usage data regarding Authorized Users' use of the Subscription Service and other information relating to the provision, use, and performance of various aspects of the Subscription Service and related systems and technologies.

(c) *Customer Feedback*. AppZen encourages Customer to provide suggestions, proposals, ideas, recommendations, or other feedback regarding improvements to the Subscription Service (collectively, "**Feedback**"). If Customer provides such Feedback, Customer grants to AppZen a royalty-free, fully paid, sublicensable, transferable (notwithstanding Section 11.7 (Assignment)), non-exclusive, irrevocable, perpetual, worldwide right and license to use, license, and commercialize Feedback (including by incorporation of such Feedback into any AppZen products or services) without restriction.

4. IMPLEMENTATION SERVICE

4.1 Implementation Services. Customer may engage AppZen to provide on-site installation, configuration, or training Services at a fee stated on the Sales Order Form. Customer agrees to pay AppZen for reasonable pre-approved out-of-pocket expenses (including travel and living) incurred by AppZen in performing its obligations for such Services. All costs and expenses incurred by Customer in connection with this Agreement are the sole responsibility of Customer. Terms regarding the delivery of the implementation service, if applicable, will be set forth in a Sales Order Form. To the extent that Customer does not purchase such implementation Services, Customer will be responsible for implementation at its own expense, and Customer will be fully responsible for such implementation, with AppZen having no liability for any service or other issues arising out of or related to Customer's implementation.

4.2 Onsite Policies. If in the course of providing the implementation service or any other AppZen services, AppZen personnel go onsite to Customer's premises, AppZen will require such personnel to comply with commercially reasonable onsite access policies that have been provided by Customer to such personnel reasonably in advance, provided that such policies will not impose obligations on AppZen or be considered incorporated by reference or otherwise included within the terms of this Agreement.

5. FEES AND PAYMENTS

5.1 Fees. In consideration for the Services, Customer will pay to AppZen the fees set forth in the Sales Order Form in US Dollars. Subscription Service and support fees are invoiced annually in advance. Customer shall pay all fees specified in each Sales Order Form in accordance with the payment terms set forth therein. Prices stated in each Sales Order Form are final. The Subscription Term, as set forth in each Sales Order Form, is a non-divisible and continuous commitment, regardless of the invoice or payment schedule, and pricing is based on the purchase of the entire Subscription Term. Upon execution by Customer and AppZen, each Sales Order Form is non-cancelable and non-refundable, except as provided in this Agreement. All amounts payable to AppZen under this Agreement will be due thirty (30) days after the applicable invoice date. AppZen will be entitled to withhold performance and discontinue the Services until any past due amount is paid in full. Any undisputed amounts not paid when due will bear interest at the rate of one percent (1%) per month, or the maximum rate allowed under applicable law, whichever is less. Any disputes concerning charges must be raised within thirty (30) days after invoice date; absent an objection raised within that time frame, the amounts will be considered undisputed for all purposes.

5.2 **Taxes**. The fees are exclusive of all applicable sales, use, withholding, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges. Customer will be responsible for payment of all taxes (other than taxes based on AppZen's income), fees, duties, and charges and any related penalties and interest, arising from the payment of the fees, the delivery of the Services, or the use of the Subscription Service by Customer. Customer will make all payments of fees to AppZen free and clear of, and without reduction for, any withholding taxes, where applicable. Any such taxes imposed on payments of fees to AppZen will be Customer's sole responsibility, and Customer will provide AppZen with official receipts issued by the appropriate taxing authority, or such other evidence as AppZen may reasonably request to establish that such taxes have been paid.

5.3 **Use Verification**. AppZen may remotely review Customer's use of the Subscription Service, and on AppZen's written request, Customer will provide reasonable assistance to verify Customer's compliance with the Agreement, and access to and use of the Subscription Service. If AppZen determines that Customer has exceeded its permitted access and use rights to the Subscription Service, AppZen may notify Customer of any actual or potential overage by Customer. In the event of an overage, Customer agrees to either, (a) purchase additional licenses necessary to cover the overage at the rate of one-hundred and fifty percent (150%) of the subscription fee rate paid during the current Subscription Term, or (b) increase the licenses purchased necessary to cover the overage in blocks equal to ten percent (10%) of the total number of licenses purchased for the current Subscription Term at the fee rate in the current Sales Order Form. Option (b) must be exercised within 30 days of an overage and not later than the expiration of the Subscription Term in which the overage occurred.

6. WARRANTIES AND DISCLAIMERS

6.1 **Limited Warranty**. AppZen warrants to Customer that the Services will be performed in a good and workmanlike manner. The foregoing warranty will not apply to performance issues of the Subscription Service (a) that result from any actions or inactions of Customer or any third parties as a violation of this Agreement or the Documentation; (b) that result from Customer's data structures, operating environment, or equipment; or (c) caused by other factors outside of AppZen's reasonable control. Provided that Customer notifies AppZen in writing of any breach of the foregoing warranty during the term of this Agreement, AppZen will, as Customer's sole and exclusive remedy for any Errors with the operation of the Subscription Service, (i) provide the AppZen technical support services to correct such Error(s), or (ii) if AppZen is unable to correct such Error(s) within a commercially reasonable amount of time, and such Error(s) are both material and cause the Subscription Service to fail to perform substantially according to the Documentation, AppZen may elect to terminate this Agreement and refund to Customer the prepaid fees covering that part of the applicable Subscription Term for the affected Subscription Service remaining after the effective date of termination.

6.2 **Disclaimer**. THE LIMITED WARRANTY SET FORTH IN SECTION 6.1 IS MADE FOR THE BENEFIT OF CUSTOMER ONLY. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6.1 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED ON AN "AS IS, WHERE IS" BASIS, AND APPZEN MAKES NO OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE SERVICES PROVIDED TO CUSTOMER BY APPZEN. APPZEN DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SUBSCRIPTION SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

7. LIMITATION OF LIABILITY

7.1 **Types of Damages**. TO THE EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, REVENUE, GOODWILL, BUSINESS INTERRUPTION, OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT,

CONTRACT, OR OTHERWISE, EVEN IF A PARTY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES.

7.2 **Amount of Damages**. TO THE EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, EXCEPT WITH RESPECT TO INDEMNIFICATION OBLIGATIONS, THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT WILL NOT EXCEED THE FEES PAID OR OWED BY CUSTOMER TO APPZEN DURING THE TWELVE (12) MONTHS PRECEDING THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY.   THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT INCREASE THIS LIMIT. WITH RESPECT TO INDEMNIFICATION OBLIGATIONS, THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT WILL NOT EXCEED TWO TIMES (2X) THE FEES PAID OR OWED BY CUSTOMER TO APPZEN DURING THE TWELVE (12) MONTHS PRECEDING THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY.   THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT INCREASE THIS LIMIT.

7.3 **Exclusions**. NOTHING IN THIS AGREEMENT WILL LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR ITS INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, RECKLESS OR INTENTIONAL MISCONDUCT, DEATH OR PERSONAL INJURY, OR OBLIGATION TO PAY FOR THE FEES OWED HEREUNDER.

7.4 **Basis of the Bargain**. The parties agree that the limitations of liability set forth in this Section 7 will survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the fees have been set and the Agreement is entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

8. CONFIDENTIALITY

8.1 **Confidential Information**. During the term of this Agreement, each party (the **"Disclosing Party"**) may provide the other party (the "**Receiving Party**") with certain information regarding the Disclosing Party's business, technology, products, or services or other confidential or proprietary information (collectively, **"Confidential Information"**).   For the avoidance of doubt, the Subscription Service, Documentation, and all enhancements and improvements thereto, will be considered Confidential Information of AppZen, and the Raw Data will be considered Confidential Information of Customer.

8.2 **Protection of Confidential Information**. The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except as expressly permitted under this Agreement. The Receiving Party will limit access to the Confidential Information to its employees and contractors who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information. In addition, the Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party's request or upon termination of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement. The obligation to return or destroy Confidential Information or copies thereof will not extend to automatically generated computer back-up or archival copies generated in the ordinary course of the Receiving Party's information systems procedures or to material that must be retained under applicable law, provided that such archived and/or legally required to be retained copies will (i) be erased or destroyed in the ordinary course of such party's data processing procedures and (ii) will remain fully subject to the obligations of confidentiality stated herein for so long as they are retained.

8.3 **Exceptions**. The confidentiality obligations set forth in this section will not apply to any information that (a) becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) the Receiving Party can prove, by clear and convincing evidence, was already known to the Receiving Party without restriction at the time of disclosure; or (d) the Receiving Party can prove, by clear and convincing evidence, was independently developed by employees and contractors of the Receiving Party who had no access to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving Party to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative

body, provided that the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order.

9. INDEMNIFICATION

9.1 **By AppZen**. AppZen will defend at its expense any third party suit brought against Customer, and will pay any settlement AppZen makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the Subscription Service infringes or misappropriates any Intellectual Property Rights of such third party. If any portion of the Subscription Service becomes, or in AppZen's opinion is likely to become, the subject of a claim of infringement, AppZen may, at AppZen's option: (a) procure for Customer the right to continue using the Subscription Service; (b) replace the Subscription Service with a non-infringing, substantially similar subscription service; (c) modify the Subscription Service so that it becomes non-infringing; or (d) terminate this Agreement and refund to Customer the prepaid fees covering that part of the applicable Subscription Term for the affected Subscription Service remaining after the effective date of termination, and upon such termination, Customer will immediately cease all use of the Subscription Service. Notwithstanding the foregoing, AppZen will have no obligation under this section or otherwise to the extent any infringement claim is based upon (w) any use of the Subscription Service not in accordance with this Agreement or as specified in the Documentation; (x) any use of the Subscription Service in combination with other products, equipment, software or data not supplied or recommended by AppZen; (y) any modification of the Subscription Service by any person other than AppZen or its authorized agents; or (z) modification of the Subscription Service based upon specifications furnished by Customer. **This Section 9.1 states the sole and exclusive remedy of Customer and the entire liability of AppZen, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for third party claims and actions described in this Section 9.1.**

9.2 **By Customer**. Customer will defend at its expense any third party suit brought against AppZen, and will pay any settlement Customer makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party arising out of or relating to Customer's breach or alleged breach of Section 1.2, 2.1 or 2.3. **This Section 9.2 states the sole and exclusive remedy of AppZen and the entire liability of Customer, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for third party claims and actions described in this Section 9.2.**

9.3 **Procedure**. The indemnifying party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party will promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (b) the indemnifying party will have sole control of the defense or settlement of any claim or suit; and (c) the indemnified party will reasonably cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

10. TERM AND TERMINATION

10.1 **Term**. This Agreement commences on the Effective Date and remains in effect until the Order End Date in the last issued Sales Order Form unless earlier terminated as set forth below. This Agreement shall be automatically renewed for consecutive one (1) year terms unless either party provides written notice to the other of its intention not to renew at least sixty (60) days prior to the expiration of the then-current term. Unless otherwise stated in the Sales Order Form, the per-unit pricing for any automatic renewal term will increase by no more than 8% of the per-unit pricing for the applicable Subscription Service in the immediately prior Subscription Term.

10.2 **Termination**. Either party may terminate this Agreement immediately following notice to the other party if the other party materially breaches this Agreement, and such breach remains uncured for thirty (30) days after delivery of written notice of such breach. Implementation service is separately ordered from the Subscription Service. A breach by a party of its obligations with respect to the implementation service will not by itself constitute a breach by that party of its obligations with respect to the Subscription Service even if the services are enumerated in the same Sales Order Form.

10.3 **Effect of Termination**. Upon termination or expiration of this Agreement for any reason: (a) all rights and obligations of both parties, including all licenses granted hereunder, will immediately terminate (except that all payment obligations accrued prior to termination or expiration will survive and as provided for below); and (b) within ten (10) days after the effective date of termination, each party will comply with the obligations to return, destroy or erase all Confidential Information of the other party, as set forth in Section 8.2. The following sections will survive expiration or termination of this Agreement for any reason: (i) Exhibit A General Terms and Conditions: Sections 2, 3, 5, 6.2, 7, 8,

9, and 10, 11, and (ii) Exhibit B Definitions. AppZen will, within 30 days after the effective date of termination by Customer for AppZen's breach, refund to Customer any prepaid fees received by AppZen covering that part of the Subscription Term for the affected Subscription Service, if any, remaining after the effective date of termination. Within 30 days after the effective date of termination by AppZen for Customer's breach, Customer will pay all remaining amounts, if any, payable under this Agreement for the Subscription Term applicable to the terminated Subscription Service regardless of the due dates specified in the current Sales Order Forms. Customer may within thirty (30) days of termination of this MSA, request AppZen, by submitting a support ticket, to return Customer's Raw Data and Output Values in its instance. Thereafter, AppZen will delete Customer's instance and any data contained therein (including Raw Data, Output Values, and any other items).

11.   MISCELLANEOUS

11.1   Insurance. AppZen will for the term of the Agreement obtain and maintain with sound and reputable insurers, at its own expense, insurance coverage, in the amounts that are prudent or usual for a company conducting a business similar to AppZen, and taking into account the nature of the Services provided hereunder and the risks applicable to AppZen. Upon Customer's written request, AppZen will promptly furnish a certificate of insurance.

11.2   Governing Law and Dispute Resolution. This Agreement will be governed by the law of the State of California, without regard to principles of conflicts of law. In the event of a dispute between the parties (a "**Dispute**"), each party will provide the other party with written notice of the Dispute as soon as practicable, and the parties agree to exercise commercially reasonable efforts to resolve the Dispute amicably through their designated officers. A Dispute that cannot be resolved within thirty (30) days following the notice of the Dispute will, upon written demand of either party, be resolved exclusively by final and binding arbitration. If both parties have headquarters in California, arbitration will be conducted exclusively in Santa Clara, California. If Customer is not headquartered in California, arbitration will be conducted exclusively in New York, New York. Arbitration will be held by the Judicial Arbitration and Mediation Service ("JAMS") pursuant to the United States Arbitration Act, 9 U.S.C., Section 1 et seq, and the Comprehensive Arbitration Rules and Procedures of JAMS then in effect. The arbitration will be conducted, and all evidence will be submitted in the English language. Each party will bear its own costs and expenses, and the two parties will share equally the fees and costs of the arbitrators. Each party will choose one independent arbitrator. The award rendered in the arbitration will be final and binding and may be enforced in any court of competent jurisdiction. The foregoing will not apply if the Dispute involves a breach of confidentiality obligation or an infringement of the other party's intellectual property rights. THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

11.3   Export Compliance. Each party will comply with local and foreign export control Applicable Laws, including U.S. export control laws. Customer acknowledges that the Subscription Service is subject to U.S. Export Administration Regulations ("EAR") and that Customer will comply with EAR. Without limiting the foregoing, Customer represents and warrants that: (a) it is not located in, and will not use any Subscription Service from, any country subject to U.S. export restrictions (currently including Cuba, Iran, North Korea, Sudan, Syria, and Crimea Region); (b) Customer will not use the Subscription Service in the design, development, or production of nuclear, chemical, or biological weapons, or rocket systems, space launch vehicles, sounding rockets, or unmanned air vehicle systems; and (c) Customer is not prohibited from participating in U.S. export transactions by any federal agency of the U.S. government. In addition, Customer is responsible for complying with any local Applicable Laws that may impact Customer's right to import, export, or use Subscription Service.

11.4   US Government Rights. AppZen software is commercial computer software (as defined in Federal Acquisition Regulation ("**FAR**") 2.101 for civilian agency purchases and Department of Defense ("**DOD**") FAR Supplement ("**DFARS**") 252.227-7014(a)(1) for defense agency purchases) and AppZen services are commercial items. If the software is licensed or services are acquired by or on behalf of a civilian agency, AppZen provides the software, its documentation, and any other technical data subject to this Agreement consistent with FAR 12.212 (Computer Software) and FAR 12.211 (Technical Data). If the software is licensed or services are acquired by or on behalf of any DOD agency, AppZen provides the software, its documentation, and any other technical data subject to this Agreement consistent with DFARS 227.7202-3. If this is a DOD prime contract or DOD subcontract, the DOD agency Customer may acquire additional rights in technical data under DFARS 252.227- 7015(b). This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses government rights in computer software or technical data.

11.5   Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

11.6   Waiver. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

11.7   No Assignment. Customer will not assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of AppZen, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that Customer may assign this Agreement in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without the consent of AppZen, by providing notice of the assignment as soon as practicable. The terms of this Agreement will be binding upon the parties and their respective successors and permitted assigns.

11.8   Force Majeure. Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the reasonable control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

11.9   Independent Contractors. Customer's relationship to AppZen is that of an independent contractor, and neither party is an agent or partner of the other. Neither party will have, and will not represent to any third party that it has, any authority to act on behalf of the other.

11.10   Use of Name and Logo. Customer hereby permits AppZen to make reasonable promotional use of its logo and name, and agrees to participate in one or more joint marketing opportunities coordinated and mutually agreed by the parties in advance.

11.11   Notices. Each party must deliver all notices or other communications required or permitted under this Agreement in writing to the other party at the address listed on the Sales Order Form by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Notice will be effective upon receipt or refusal of delivery. If delivered by certified or registered mail, any such notice will be considered to have been given five (5) business days after it was mailed, as evidenced by the postmark. If delivered by courier or express mail service, any such notice will be considered to have been given on the delivery date reflected by the courier or express mail service receipt. Each party may change its address for receipt of notice by giving notice of such change to the other party.

11.12   Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument.

11.13   Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such subject matters. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by an authorized signatory of Customer and AppZen. For avoidance of doubt, no purchase order or similar Customer-issued ordering document may be deemed to alter or supersede any terms set forth herein even to the extent that AppZen signifies acceptance of any such Purchase Order or similar document; any such acceptance will serve solely as an acknowledgement of Customer's order. Customer's orders are not contingent, and Customer has not relied, on the delivery of any future functionality regardless of any verbal or written communication about AppZen's possible future plans.

Capitalized terms will have the meanings set forth in this section, or in the section where they are first used.

"**Access Protocols**" means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Customer or Authorized Users to access the Subscription Service.

"**Affiliate**" means any individual, corporation, partnership, limited liability company, or other entity that directly or indirectly, controls, or is controlled by, or is under common control with, a party. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of any such entity or organization, whether through the ownership of securities, by contract, or otherwise.

"**Agreement**" means the terms and conditions of this MSA, any Sales Order Form referencing this MSA, and any other schedules, supplements, statements of work, exhibits, or appendices thereto, whether attached or incorporated by reference. This MSA will apply to all Sales Order Forms issued hereunder.

"**Applicable Laws**" means all laws, regulations, standards, and self-regulatory guidelines applying to the Parties and/or the provision or use of the Services, including but not limited to laws, regulations, standards, and self-regulatory guidelines relating to privacy, data protection, security, breach notification, consumer protection, or the Processing of Personal Data that may apply to Customer or AppZen, as applicable. Applicable Laws include but are not limited to the California Consumer Privacy Act (Cal. Civ. Code §§ 1798.100 - 1798.199) and the General Data Protection Regulation (Regulation (EU) 2016/679).

"**Authorized User**" means any individual who is an employee or contractor of Customer or Affiliate of Customer authorized by Customer to access the Subscription Service pursuant to Customer's rights under this MSA.

"**Documentation**" means the technical materials and documentation made available by AppZen in electronic form describing the use and operation of the Services.

"**DPA**" means the AppZen Data Processing Addendum, including the Standard Contractual Clauses and appendices in effect at https://www.appzen.com/data-processing-addendum/ as may be amended by AppZen from time to time.

"**Error**" means a reproducible failure of the Subscription Service to substantially conform to the Documentation.

"**Intellectual Property Rights**" means any and all intellectual property, industrial property, and other proprietary rights available under applicable law, including all rights with respect to patents, copyrights, moral rights, trademarks, trade secrets, know-how, algorithms, and databases.

"**Order End Date**" means the date on the Sales Order Form indicating when the Subscription Service will end.

"**Order Start Date**" means the date on the Sales Order Form indicating by when AppZen will provide the Access Protocols to Customer.

"**Output Values**" includes without limitation the results from Processing the Raw Data through the Subscription Service as well as any other information generated by use of the Subscription Service pursuant to this Agreement. Output Values exclude Raw Data.

"**Personal Data**" means any information relating to an identified or identifiable individual, unless Applicable Laws provide for a different definition for "Personal Data" or a similar term, like personal information, in which case "Personal Data" has the meaning set forth by the Applicable Laws.

"**Process**" and "**Processing**" mean any operation or set of operations performed on Raw Data, whether or not by automated means, such as collection, recording, organization, creating, structuring, storage, adaptation or alteration,

retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

"**Raw Data**" means any information provided or transmitted by Customer or on behalf of Customer to the Subscription Service. For the avoidance of doubt, "Raw Data" includes Personal Data.

"Sales **Order Form**" means all written order forms or other ordering documentation signed by Customer and accepted by AppZen referencing this MSA and identifying the applicable Services to be made available by AppZen, fees, Subscription Term, and other terms and conditions applicable to the Services.

"**Services**" means the Subscription Service, Documentation, support service, implementation service, and any related services agreed by the parties in a Sales Order Form.

"**Subscription Service**" means the software as a cloud service identified in a Sales Order Form, including the AppZen platform and its proprietary machine learning algorithms, hosted on AppZen's servers or those of its hosting services providers, accessed and used by Customer via the worldwide web.

"**Subscription Term**" means the duration when the Subscription Service will be made available to Customer, as indicated by the Sales Order Start Date and the Sales Order End Date.

EXHIBIT C
PRODUCT AND SERVICES GUIDE

https://support.appzen.com/hc/en-us/articles/4409825445267