

**ANONYMIZER
MASTER APPLICATION SERVICE PROVIDER AGREEMENT**

This Master Application Service Provider Agreement (“*Agreement*”), is entered into and effective as of **December 8, 2004** (“*Effective Date*”), by and between Anonymizer, Inc., with principle place of business at 6305 Lusk Blvd., San Diego, California 92121 (“*ANONYMIZER*”), and **XXXXXXXXXX, Inc.** (“*Client*”).

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS. The following terms will have the meanings set forth below with respect to this Agreement. All definitions used in this Agreement, including any Order Form, apply to both their singular and plural forms, as the context may require.

1.1 “*Hosting Services*” means the real-time processing services that allow Client to access the services described in the applicable Order Form.

1.2 “*Maintenance and Support Services*” means the maintenance and support services provided to Client with respect to the Hosting Services, as further described in the applicable Order Form.

1.8 “*Notice of Service Availability*” or “*NOSA*” means the notice given to Client which states that the Hosting Services are available as described in the form of notice attached as Exhibit B hereto.

1.9 “*Order Form(s)*” means the document attached to this Agreement as Exhibit A-1, with each subsequent Order Form being labeled in sequential order (e.g., Exhibit A-2, Exhibit A-3,...), executed by each party’s authorized representative, that references this Agreement and describes the Hosting Services and certain other Services that are being provided to Client under the terms and conditions of this Agreement.

1.10 “*Services*” collectively means the Hosting Services, Set-Up Services, Maintenance and Support Services and Additional Services described herein, any Order Form.

1.14 “*Set-Up Services*” means the set-up services provided to Client with respect to the Hosting Services, as further described in the applicable Order Form.

2. LICENSE GRANTS AND RESTRICTIONS.

2.1 License Grant to the Hosting Services. Subject to the terms and conditions of this Agreement, ANONYMIZER hereby grants to Client, effective during the Term (defined below) of this Agreement, a personal, non-exclusive, non-transferable, non-sublicensable, revocable, limited copyright license to perform and display the Hosting Services; only by authorized employees of Client; only during the Term; only for the benefit of Client’s internal business.

2.5 Restrictions; Client Warranties. Except for the limited license rights expressly granted to Client in Section 2.1 above, Client represents and warrants that neither Client nor its employees, representatives and/or agents: (a) shall in any way alter, change, modify, adapt, translate or make derivative works of the Hosting Services; (b) shall sublicense or operate the Hosting Services for timesharing, rental, outsourcing; (c) shall use any of the Services in a manner that violates any foreign, federal, state or local law or regulation, (d) infringes or violates any intellectual property rights, publicity, privacy, confidentiality, contractual or other rights; (e) shall transmit information that is defamatory, offensive, misleading, false, harmful to minors, or obscene; (f) shall transmit any viruses or programming routines intended to damage, surreptitiously intercept, or expropriate any system, data or personal information.

2.6 Reservation of Rights Not Granted. ANONYMIZER reserves all rights not expressly granted to Client under this Agreement. Without limiting the foregoing, ANONYMIZER retains and reserves sole and exclusive worldwide rights, title, ownership and interest in and to all ANONYMIZER Hosting Services and ANONYMIZER Proprietary Information (defined below), including any Intellectual Property Rights arising from or related to any of the foregoing, subject to only the limited, non-exclusive, license rights granted to Client in Sections 2.1 above. Nothing in this Agreement shall limit in any way ANONYMIZER’s right to develop, use, license, create derivative works of, or otherwise exploit ANONYMIZER’s Services and its proprietary information. ANONYMIZER shall be free to use the concepts, techniques and know-how used and developed in connection with this Agreement. In any event, ANONYMIZER shall continue to be free to perform similar services for other clients and customers, including competitors of Client, using general knowledge, skills and experience.

3. PROTECTION OF CONFIDENTIAL INFORMATION.

3.1 Nondisclosure Agreement. The parties have executed a Nondisclosure agreement dated April 15, 2004. The parties agree that the terms and conditions stated in said Nondisclosure agreement shall be control any confidential information exchanged by the parties in the performance of this Agreement and the term of said Nondisclosure agreement shall be extended to the match the term of this Agreement.

4. WARRANTIES.

4.1 Services. ANONYMIZER warrants that the Services performed hereunder shall be performed in a professional and workmanlike manner consistent with generally accepted industry practices. Client must report any breach of the foregoing warranty within thirty (30) days after completion of the Service that formed the basis of such breach. For any breach of this warranty, Client’s sole and exclusive remedy, and ANONYMIZER’s entire liability, shall be the re-performance of the Additional Service that formed the basis of such breach at no additional cost.

4.2 Each Party Warrants that it will comply with all applicable foreign, federal, state and local laws and regulations in the course of performing its obligations and any Services to be provided under this Agreement, and in using the Services hereunder.

4.3 **EXCEPT FOR THE EXPRESSED WARRANTIES STATED ABOVE IN SECTION 4.1, ANONYMIZER DOES NOT MAKE ANY FURTHER WARRANTIES AND HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS OR CONDITIONS, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. ALL SERVICES PERFORMED, WORK PRODUCT AND THIRD PARTY PRODUCT PROVIDED BY ANONYMIZER HEREUNDER ARE PERFORMED AND PROVIDED ON AN “AS-IS” AND “AS AVAILABLE” BASIS AND CLIENT’S USE OF THOSE SERVICES, WORK PRODUCT AND THIRD PARTY PRODUCT IS AT CLIENT’S OWN RISK. ANONYMIZER DOES NOT WARRANT THAT THE SERVICES, WORK PRODUCT AND**

THIRD PARTY PRODUCT PROVIDED HEREUNDER WILL (I) MEET CLIENT'S REQUIREMENTS OR (II) OPERATE UNINTERRUPTED, ERROR-FREE OR WITHOUT DELAY.

5. INDEMNIFICATION.

5.1 Indemnification. ANONYMIZER will defend at its own expense any action against Client brought by a third party to the extent that the action is based upon a claim that the ANONYMIZER Hosting Services directly infringes upon any U.S. registered patent or copyright or misappropriates any trade secret recognized as such under the Uniform Trade Secrets law. Furthermore, ANONYMIZER will pay those costs and damages finally awarded against Client in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action.

5.2 Conditions. ANONYMIZER's indemnification obligations under Section 5.1 above are conditioned upon: (a) Client promptly notifying ANONYMIZER in writing of such action; (b) Client giving ANONYMIZER sole control of the defense thereof and any related settlement negotiations; (c) Client's compliance with Sections 2 and 3 hereof; and (d) Client cooperating with ANONYMIZER in such defense (including without limitation, by making available to ANONYMIZER all documents and information in Client's possession or control that are relevant to the infringement or misappropriation claims, and by making Client's personnel available to testify or consult with ANONYMIZER or its attorneys in connection with such defense).

5.3 Exclusions. Notwithstanding the foregoing, ANONYMIZER shall have no obligation or otherwise with respect to any infringement or misappropriation claim based upon: (a) any violation of the licenses granted under this Agreement or any Order Form or for use of ANONYMIZER intellectual property for any purpose not intended by ANONYMIZER; (b) any combination of the ANONYMIZER Hosting Services with other products, equipment, software, or data not supplied or approved in writing by ANONYMIZER; or (c) any modification of the Hosting Services made by any entity other than ANONYMIZER.

5.4 Entire Liability. THIS SECTION 5 STATES ANONYMIZER'S ENTIRE LIABILITY AND CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ALL INFRINGEMENT AND MISAPPROPRIATION CLAIMS AND ACTIONS.

5.5 Indemnification by Client. Client will defend at its own expense any action against ANONYMIZER brought by a third party to the extent that the action is based upon a claim that would be a breach by Client of Section 4.2, if such claim were true. Furthermore, Client will pay those costs and damages finally awarded against ANONYMIZER in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action as well as ANONYMIZER's reasonable attorney's fees. Client's obligations under this section are conditioned upon ANONYMIZER giving Client (a) prompt written notice of the claim.; (b) reasonable assistance, at the Client's expense, to defend such claim; and (C) sole control of the defense and settlement of the claim, except that ANONYMIZER's prior written approval will be required for any settlement that reasonably can be expected to require a material affirmative obligation of, or result in any ongoing material liability to, ANONYMIZER, and ANONYMIZER will also have the right to employ a separate counsel and participate in the defense of such claims at its own expenses.

6. LIMITATIONS OF LIABILITY.

6.1 Limited Liability. EXCEPT FOR MATERIAL BREACH OF SECTION 3 "CONFIDENTIALITY" AND BREACH OF ANONYMIZER'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS) PUNITIVE OR INCIDENTAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING ANY ORDER FORM, EVEN IF THE PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE.

6.2 Limit on Maximum Liability. EXCEPT FOR MATERIAL BREACH OF ANONYMIZER'S INTELLECTUAL PROPERTY RIGHTS, TO SATISFY CLIENT'S INDEMNIFICATION OBLIGATION AND PAYMENT OBLIGATIONS UNDER THIS AGREEMENT, EACH PARTY'S TOTAL AGGREGATE AND CUMMULATIVE LIABILITY SHALL NOT EXCEED THE AMOUNT PAID BY CLIENT FOR THE HOSTING SERVICES DURING THE SIX MONTHS IMMEDIATELY PRECEEDING THE DATE OF THE CLAIM THAT GAVE RISE TO SUCH LIABILITY.

7. PAYMENT TERMS.

7.1 Invoices and Payment. All fees and expenses invoiced under this Agreement will be due and payable in United States dollars by Client within thirty (30) days of Client's receipt of such invoice at the billing address designated by Client in Section 10.8 below, unless such amounts are due upon execution of this Agreement, applicable Order Form as provided therein. Client shall reimburse ANONYMIZER for all costs related to any proceedings to collect any past due amounts including without limitation all attorney fees.

8. TERM AND TERMINATION.

8.1 Term. This Agreement shall commence on the Effective Date and shall remain in effect for twelve (12) months (the "*Term*"). The Term will renew automatically for another term, if written notice of intent to terminate is not received within ten (10) days prior to the end of the current term. Neither party will have the ability to terminate this Agreement for any reason other than those stated herein section 8.1 or below in section 8.2.

8.2 Events of Termination. Either party may terminate this Agreement upon the occurrence of any of the following events:

(a) Uncured Breach. Either party may terminate this Agreement for a breach by the other party of any material terms of the Agreement or numerous breaches of duties or obligations hereunder that cumulatively constitute a material breach of the Agreement, and the breaching party fails to cure such breach(es) within thirty (30) days from receipt of written notice from the non-breaching party identifying such breach(es); or

(b) Insolvency. Either party may terminate this Agreement if the other party ceases to conduct business in the ordinary course or is declared insolvent or bankrupt, or makes an assignment of substantially all of its assets for the benefit of creditors, or a receiver is appointed, or any proceeding is demanded by, for or against the other party under any provision of bankrupt or insolvency legislation.

8.4 Effect of Termination. Upon termination or expiration of this Agreement for any reason, Client shall immediately cease using the Hosting Services.

8.5 Survival. The following rights and obligations will survive any termination or expiration of this Agreement: Sections 1 (Definitions) and any other definitions provided elsewhere in this Agreement, including Order Forms; 3 (Confidentiality); 4.4 (Warranty Disclaimer); 6 (Limitation of Liability); 8.4 (Effect of Termination); 8.5 (Survival); and 10 (Provisions of General Applicability).

9. DELIVERY OF SERVICES; COOPERATION.

9.1 Service Implementation. ANONYMIZER will perform the Set-Up Services described in the applicable Order Form. The Set-Up Services will be deemed complete upon delivery of the Notice of Service Availability (NOSA) an example of which is attached hereto as Exhibit B.

9.2 Hosting Services Maintenance and Support Services. Subject to Client's compliance with its obligations hereunder (including, but not limited to, payment of all applicable fees), ANONYMIZER will provide the Hosting Services, as further described in the applicable Order Form. ANONYMIZER may provide the Hosting Services and/or Maintenance and Support Services through a third-party vendor or subcontractor.

9.3 Additional Services. If Client and ANONYMIZER agree to use ANONYMIZER resources for any additional services to include, but not limited to, installation, consulting, analysis, and/or training, then such additional services will be provided in the applicable Order Form (collectively, "**Additional Services**"). ANONYMIZER may provide any Additional Services through a third-party vendor or subcontractor.

9.4 Change Request. Client's request for any change in Services must be in writing and signed by both parties; and this requirement pertains to all such requests including but not limited to requests for changes, deletions or additions in Hosting Services. ANONYMIZER shall not be obligated to perform tasks described in Client's request until the parties agree in writing to the proposed change.

10. PROVISIONS OF GENERAL APPLICABILITY.

10.1 Relationship of Parties. ANONYMIZER and Client are independent contractors and will have no power to bind the other party or to create any obligation or responsibility on behalf of the other party or in the other party. This Agreement shall not be construed as creating any partnership, joint venture, agency, or any other form of legal association that would impose liability upon one party for the act or failure to act of the other party.

10.3 Counterparts. This Agreement may be executed in counterparts, which taken together shall constitute one single Agreement between the parties. A facsimile signature delivered from one party to the other party shall be deemed an original signature for purposes of this Agreement.

10.4 Section Headings. The section and subsection headings used herein are for reference and convenience only, and will not enter into the interpretation hereof.

10.5 No Waiver. No delay or omission by either party to exercise any right or power with respect to any of the terms or conditions of this Agreement will impair any right or power or be construed to be a waiver thereof. A waiver by either party of any of the terms and conditions of this Agreement will not be construed to be a waiver of any other term or condition of this Agreement. No waiver of any rights of a party under this Agreement will be effective unless set forth in a writing signed by such party.

10.6 Severability. If any provision of this Agreement is held to be unlawful or invalid under applicable law, then such provision will be ineffective only to the extent of such illegality or invalidity, without invalidating the remainder of such provision or any of the remaining provisions of this Agreement.

10.7 Governing Law. This Agreement will be governed by and construed in accordance with the State of California, without regard to principles of conflicts of law or international law, including without limitation the 1980 United Nations Convention on Contracts for the International Sale of Goods, as revised.

10.8 Notices, Billing and Delivery. Under this Agreement, if one party is required to give notice to the other, such notices shall be deemed given when personally delivered or three (3) business days after being sent by certified, first-class, postage-prepaid mail, and addressed as follows (or to such other address for notice as a party may subsequently notify the other in accordance with the provisions of this Section 10.8):

	For Client	Client's Billing (if different)	For ANONYMIZER
Name/Title:	_____	_____	Accounts Receivable
Company:	_____	_____	Anonymozer, Inc.
Address:	_____	_____	6305 Lusk Blvd.
City/State:	_____	_____	San Diego, CA
Zip/County:	_____	_____	92121
Country:	_____	_____	USA
Phone:	_____	_____	619-725-3180
Fax:	_____	_____	619-725-3188
Email:	_____	_____	_____

10.9 No Assignment. Neither party shall, without the prior written consent of the other party, assign or transfer this Agreement or rights arising from this Agreement, and such consent shall not be unreasonably withheld. Any attempt to assign or transfer this Agreement without first obtaining such written consent will be void and of no force and effect. Notwithstanding the foregoing, ANONYMIZER may assign this Agreement by merger, reorganization, consolidation, or sale of all or substantially all its assets.

10.10 Force Majeure. Notwithstanding anything to the contrary herein, ANONYMIZER shall not be deemed to be in default of any provision of this Agreement, including any Order Form or Statement of Work, or be liable to Client or to any third party for any delay, error, failure in performance or interruption of performance due to any act of God, war, insurrection, acts of terrorism, riot, boycott, strikes, interruption of power service, interruption of communications service, labor or civil disturbance, acts of any other person not under the control of ANONYMIZER or other similar causes. ANONYMIZER shall give Client reasonable written notification of any material or indefinite delay due to such causes.

10.11 Amendment. No amendment or modification of this Agreement will be deemed effective unless it is in writing and signed by an authorized representative of each party.

10.12 Controlling Document. In the event of any conflict or inconsistency between the main body of this Agreement and any Order Form or Purchase Order, the terms of the main body of this Agreement, and then the Order Form, will control solely with respect to such conflict or inconsistency.

10.13 No Third Party Beneficiaries. Nothing in the Agreement shall be deemed to create any right or benefit in any person not a party hereto.

10.14 Entire Agreement. This Agreement, including the exhibits attached hereto, between ANONYMIZER and Client, constitutes the full and entire understanding and agreement between the parties with regard to the subject matter hereof and thereof and supersedes all prior and contemporaneous proposals, all contemporaneous and future purchase orders, oral or written, understandings, representations, conditions and all other communications between the parties relating to such subject matter. Each party represents and warrants to the other party that in entering into this Agreement it has not relied upon any representations, promises or assurances from another party or any employee, officer, director, representative, attorney, or affiliate of another party not expressly contained in this Agreement. Any other terms or conditions shall not be incorporated herein or be binding upon any party unless expressly agreed to in writing by all applicable parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the Effective Date.

Executed by **XXXXXXXXXXXX, Inc:**

Executed by ANONYMIZER, INC.:

Authorized Signature: _____

Authorized Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____