1. **Scope.** This Carahsoft Rider and the Manufacturer’s Commercial Supplier Agreement (CSA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the “Client” or “Licensee”).

2. **Applicability.** The terms and conditions in the attached Manufacturer’s CSA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a) (1) (B)), the Contracts Disputes Act of 1978 (41. U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 § U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's CSA is inconsistent with the Federal Law (See FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft’s Multiple Award Schedule Contract, GS-35F-0119Y, including, but not limited to the following:

(a) **Contracting Parties.** The Government customer (Licensee) is the “Ordering Activity”, defined as an entity authorized to order under Government contracts as set forth in General Services Administration Order OGP 4800.2I, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

(b) **Changes to Work and Delays.** Subject to General Services Administration Acquisition Regulation (GSAR) 552.238-81 Modifications (Federal Supply Schedule) (APR 2014) (Alternate I – APR 2014) and GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) regarding which of the GSAR and the FAR provisions shall take precedence.

(c) **Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
(d) **Audit.** During the term of this CSA: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this CSA. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity’s security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this CSA.

(e) **Termination.** Clauses in the Manufacturer’s CSA referencing suspension, termination or cancellation of the Manufacturer’s CSA, the License, or the Customer’s Account are hereby deemed to be deleted. Termination, suspension or cancellation shall be governed by the GSAR 552.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the CSA on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section (q) below or if such remedy is otherwise ordered by a United States Federal Court.

(f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider and the CSA will be governed by and construed in accordance with the laws of the United States. All clauses in the Manufacturer’s CSA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.

(g) **Force Majeure.** Subject to GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer’s CSA referencing unilateral termination rights of the Manufacturer’s CSA are hereby deemed to be deleted.

(h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (MAY 2014) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer’s CSA are hereby deemed to be deleted.

(i) **Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (MAY 2014), and all clauses governing waiver of jury trial in the Manufacturer's CSA are hereby deemed to be deleted.
(j) **Customer Indemnities.** All of the Manufacturer’s CSA clauses referencing Customer Indemnities are hereby deemed to be deleted.

(k) **Contractor Indemnities.** All of the Manufacturer’s CSA clauses that (1) violate DOJ’s right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

(l) **Renewals.** All of the Manufacturer’s CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.

(m) **Future Fees or Penalties.** All of the Manufacturer’s CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.


(o) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.

(p) **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer’s CSA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.

(q) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer’s CSA and to this Rider shall be resolved in accordance with the FAR, the GSAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. See GSAR 552.212-4 (w) (1) (iii) Contract Terms and Conditions – Commercial Items, Law and Disputes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). The Ordering Activity expressly acknowledges that Carahsoft, as the vendor selling the Manufacturer’s licensed software, shall have standing under the Contract Disputes Act to bring such claims that arise out of licensing terms incorporated into Multiple Award Schedule Contract GS-35F-0119Y.
(r) **Limitation of Liability: Subject to the following:**

Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government’s right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

(s) **Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

(t) **Public Access to Information.** Manufacturer agrees that the CSA and this Rider contain no confidential or proprietary information and acknowledges the CSA and this Rider will be available to the public.

(u) **Confidentiality.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court. The Licensee may provide information to other components of the United States Government pursuant to proper requests for such information as permitted by law, regulation or policy (e.g., disclosures to Congress, auditors, Inspectors General, etc.).
**BUNCHBALL MASTER SERVICES AGREEMENT**

This Master Services Agreement (the "Agreement") is entered into between Bunchball Inc. ("Bunchball"), and the Government Customer, as identified in one or more order documents referencing these terms (the "Customer"). Bunchball and the Customer agree as follows:

**Section 1. Bunchball Services.** The Order (as defined below) shall specify the type of Nitro hosted solution provided by Bunchball.

1.1. Bunchball will, during the Term (as defined below):

   (a) host, operate and maintain the Nitro hosted solution (as provided in any Orders);

   (b) permit Customer’s authorized administrative users ("Administrators") to access and use the Nitro Specifications (as defined below) to integrate and implement the Nitro hosted solution into the Deployment Target, as set forth in an Order (each, an "Order");

   (c) accept and transmit Nitro Data (as defined below) between the Customer servers and the Nitro hosted solution implemented and used pursuant to such Order;

   (d) store, interpret, process and modify Customer Items (as defined below) and Nitro Data in accordance with the Nitro Specifications and the functionality of the Nitro hosted solution implemented and used pursuant to such Order; and

   (e) if applicable, Bunchball will perform the professional services ("Professional Services") requested by the Customer pursuant to a Statement of Work (a "SOW") attached hereto.

The services described in subsections (a) through (e) above are collectively referred to in this Agreement as the "Bunchball Services" or "Services". The Bunchball Services shall be performed in accordance with and subject to the Service Level Agreement dated 24 October 2011 which is attached to this Master Services Agreement.

1.2. "Nitro Specifications" means Bunchball’s specifications, manuals and other documentation, provided by Bunchball to Customer in form of an online wiki, to assist Customer’s use of the Nitro hosted solution hereunder, as updated from time to time by Bunchball.

**Section 2. Customer Matters.**

2.1. **Responsibilities.** Customer will cooperate with and assist Bunchball as reasonably necessary and helpful under this Agreement, which shall include but shall not be limited to, determining the key metrics to be provided and measured by the Nitro hosted solution and integrating Customer Servers with the Bunchball servers. The Customer is solely responsible for maintaining the confidentiality of log-in accounts and passwords for Administrators. Customer shall not provide Bunchball with any personally identifiable information. The Customer will immediately notify Bunchball of any unauthorized use of its password, secret key, or any other breach of security known to Customer. Customer shall not (a) make the Services available to any third party other than Users of the Services as set forth in the applicable Order, (b) sell, resell, rent or lease the Services or (c) attempt to gain unauthorized access to the Services or their related systems or networks.

2.2. **Performance.** If Customer exceeds 50 API calls per second peak usage, Customer agrees to work in good faith with Bunchball to optimize performance around API calls, or pay additional fees in accordance with Bunchball pricing.

2.3. **Customer Items.** Customer will secure all rights in, the artwork, games, images, videos, specifications, documents, computer programs, utilities, software, Customer trademarks, text, website data
(including both historical and current data) and other items which Customer uses with the Nitro hosted solution or furnishes to Bunchball (collectively, the "Customer Items"). Bunchball shall not be responsible or liable for the deletion, alteration, destruction, damage, loss or failure to store any Nitro Data, except that, subject to all limitations set forth in this Agreement, Bunchball will be responsible or liable only to the extent that any deletion, alteration, destruction, damage, loss or failure to store Nitro Data is directly and proximately caused by Bunchball’s actions.

2.4. Restrictions. Customer shall not (i) modify, copy, display, republish or create derivative works based on the Bunchball Services or any other Bunchball Technology (as defined below); (ii) frame, scrape, link to or mirror any content forming part of the Bunchball Service, other than on its internal intranets or otherwise for its internal business purposes; (iii) reverse engineer the Bunchball Services or the Bunchball Technology; (iv) except as set forth in Section 2.6, Customer shall not transfer access to the Bunchball Services; or (v) access the Bunchball Services in order to (A) build a competitive product or service, (B) build a product using similar ideas, features, functions or graphics of the Service, or (C) copy any ideas, features, functions or graphics of the Bunchball Service.

2.5. Use Guidelines. The Bunchball Services shall be solely used for Customer’s own internal business purposes during the applicable Term. Customer shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Bunchball Services available to any third party, other than Users as contemplated by this Agreement without the prior written consent of Bunchball; (ii) use the Bunchball Services to send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) use the Bunchball Services to send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or that violates any third-party’s privacy or intellectual property rights; (iv) upload to the Bunchball Services or use the Bunchball Services to send or store viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Bunchball Services or any data contained therein; or (vi) attempt to gain unauthorized access to the Bunchball Services or its related systems or networks.

2.6. Special Terms Related to Use of Nitro for Salesforce. If an Order specifies that the Nitro hosted solution is Nitro for Salesforce ("N4SF"), then Customer agrees as follows: (i) the Bunchball Services are provided only in connection with Salesforce.com’s web-based, on demand platform; (ii) Customer will be required to download N4SF from Salesforce.com’s App Exchange and install the application; (iii) This Agreement is solely between Customer and Bunchball and is not a contractual agreement between Customer and Salesforce.com or Salesforce.com and Bunchball; and (iv) Customer may transfer User access to the Bunchball Services among its employees at its discretion.
Section 3. Payments.

3.1. Fees. Customer shall pay Bunchball for the Bunchball Services in accordance with the fees, rates, charges, reimbursable expenses and other amounts as described in the applicable Order or SOW (collectively, the "Fees"). Order Fees will be invoicable upon execution of the Order and on start of any Renewal Term (as defined in an Order). The Customer shall provide Bunchball with all pre-launch activity and user data reasonably necessary to measure and calculate the Fees, including but not limited to (depending on pricing model):

(a) Number of Users; and
(b) Average monthly Users over the trailing 12 months

In addition, Customer shall reimburse Bunchball any out-of-pocket expenses reasonably incurred by Bunchball in performing the Bunchball Services; provided, that such expenses are approved, in advance in writing by Customer. Amounts will be due thirty (30) days from date of invoice. Any amounts not paid by Customer to Bunchball when due shall be subject to finance charges equal to one and one half percent (1.5%) per month or the highest rate permitted by applicable law, whichever is less, determined and compounded daily from the date due until the date paid. Customer shall reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by Bunchball to collect any amount that is not paid when due.

3.2. Taxes. The amounts payable to Bunchball under this Agreement do not include any taxes, customs, duties, fees or other amounts assessed or imposed by any governmental authority. Customer shall pay or reimburse Bunchball for all such amounts other than taxes imposed on Bunchball’s net income.

Section 4. Proprietary Rights.

4.1. Ownership. The Bunchball Technology (as defined below), including all intellectual property rights therein, is owned by and will be the exclusive property of Bunchball. No title to or ownership of the Bunchball Technology or other items is transferred to Customer under this Agreement, including, without limitation, any Bunchball Technology that resides on Customer’s computer servers or other computers, and no license, express or implied, is granted. "Bunchball Technology" means the Nitro hosted solution, Bunchball servers, products, computer programs, software, source code, object code, development tools, techniques, concepts, know-how, algorithms, methods, mechanics, processes, procedures, designs, engines, databases, specifications, programmer notes, works of authorship, content, audio clips, video clips, graphics, images, website templates, inventions (whether or not patentable), invention disclosures, discoveries, works of authorship (whether or not copyrightable), pre-built Bunchball-designed user interface components included as part of Bunchball’s Nitro Solutions offerings, and any modifications, improvements, or derivative works related thereto, and other technology incorporated into and/or used by Bunchball in the performance of the Bunchball Services. The Nitro Data and Customer Items are and will be the exclusive property of Customer.

4.2. Customer Items & Nitro Data. The Customer grants to Bunchball a license during the Term to reproduce, make derivative works of and otherwise use the Customer Items and Nitro Data for its internal use and for the purpose of providing the Bunchball Services to Customer. Bunchball may, during and after the Term, use, reproduce, prepare derivative works of, distribute, sell and otherwise commercially exploit the Nitro Data on an aggregate, non-individual, and non-personally identifiable basis. "Nitro Data" means the profile data regarding the Users and event data regarding such Users’ activities on the Customer’s websites and applications.

4.3. Professional Services. Any intellectual property created by Bunchball in the course of providing Professional Services to the Customer shall be and remain owned by Bunchball. Bunchball grants to the Customer a world-wide, fully paid up, irrevocable, non-exclusive, non-transferrable, sublicensable license to use such Professional Services intellectual property for the purpose of utilizing and exploiting the Bunchball Services for internal purposes only during the Term of this Agreement.

Section 5. Marketing. Customer agrees to take commercially reasonable steps to cooperate with Bunchball in marketing the Nitro hosted solution, which may include but is not limited to: (a) making press releases; (b) creating case studies; and (c) estimating return on investment. The Customer hereby grants to Bunchball a non-exclusive, nontransferable, worldwide, royalty-free right and license during the Term to use the Customer
Section 6. Term and Termination

6.1. Term. The term of this Agreement will continue until terminated in accordance with Section 6.2 or 6.3 below (the "Term").

6.2. Term of Orders. Orders commence on the Contract Start Date specified in the applicable Order and continue until the Contract End Date. Except as otherwise specified in the applicable Order, all Orders shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant subscription term. The pricing during any such renewal term shall be the same as that during the prior term unless Bunchball has given Customer notice of a pricing increase at least sixty (60) days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed seven percent (7%) of the pricing for the relevant Bunchball Services in the immediately prior subscription term, unless the pricing in such prior term was designated in the relevant Order as promotional or one-time.

6.3. Notice. If either party commits a material breach or default of any of the terms of this Agreement, any Order or any Statement of Work, then the other party shall give the defaulting party written notice of the breach or default with not less than thirty (30) days to cure such breach. If the breach thereafter remains uncured, this Agreement and all Orders and SOWs hereunder may be terminated by the non-breaching party upon written notice to the breaching party. In the event of termination due to Bunchball’s material breach of the terms of this Agreement, Bunchball will refund to Customer any pre-paid, but unaccrued Fees paid by Customer to Bunchball. Either party may terminate this Agreement upon thirty (30) days written notice to the other party if the term of all Orders and SOWs have expired or been terminated.

6.4. Effect. Upon termination of this Agreement: (a) Bunchball will have no obligation to perform any Bunchball Services under the Agreement or any Order or SOW after the effective date of the termination and all Orders or SOWs under this Agreement will immediately terminate as of the date of termination; (b) Customer will pay to Bunchball any Fees, reimbursable expenses, compensation or other amounts payable under the Agreement prior to the effective date of the termination; and (c) the parties’ respective rights and obligations under Sections 3, 4, 6, 7, 8, and 9 will survive the termination of the Agreement.

6.5. Suspension. If the Customer has materially breached the Agreement, Bunchball also may immediately suspend any work or Bunchball Services required by this Agreement, provided that Bunchball will provide prompt written notice of such suspension and will promptly re-instate any work or Bunchball Services upon Customer’s cure of the material breach.

Section 7. Infringement

7.1. Infringement. Bunchball will indemnify Customer from any third-party claim that the Bunchball Technology infringes any United States patent, copyright or trademark if the Customer: (a) promptly gives Bunchball written notice of the claim; (b) authorizes Bunchball to control the defense of the claim; and (c) provides such assistance as Bunchball may reasonably request. If Bunchball determines in its discretion that the Bunchball Technology or Bunchball Services may infringe on the intellectual property rights of a third party, Bunchball may use commercially reasonable efforts to either: (y) acquire the right for Customer to continue to use such Bunchball Technology in accordance with the applicable license; or (z) provide a correction, modification or enhancement with substantially the same functionality to avoid or correct the infringement. If Bunchball cannot accomplish (y) or (z) above within a reasonable period and at a commercially reasonable cost, then Bunchball may refund an equitable portion of the amounts paid by Customer to Bunchball for such Bunchball Technology or Bunchball Services and terminate this Agreement. In no event shall either party settle any claim of infringement for which indemnification may be due hereby without the consent of the other party. The foregoing shall be Customer’s sole and exclusive remedy under this Section 7.1.
7.2. **Exclusions.** Bunchball’s indemnification obligations under Section 7.1 do not apply to any infringement resulting from any (a) Customer Items or Nitro Data; (b) use not in accordance with this Agreement; (c) modification, damage, or misuse of the Bunchball Technology by Customer or any third party; or (d) combination of the Bunchball Technology with any other goods, services or items provided by Customer or any third party. Bunchball warrants that it makes industry standard efforts to ensure that the Bunchball Technology is free from bugs, errors, defects, viruses and deficiencies.

7.3 **DISCLAIMER.** THE WARRANTIES, OBLIGATIONS AND LIABILITIES OF BUNCHBALL AND THE REMEDIES OF CUSTOMER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF, AND CUSTOMER HEREBY WAIVES, RELEASES AND DISCLAIMS, ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES OF BUNCHBALL AND ALL OTHER RIGHTS, CLAIMS AND REMEDIES OF CUSTOMER AGAINST BUNCHBALL, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. Bunchball warrants that Service will substantially conform to the applicable Documentation for such Service and that any media will be free from manufacturing defects in materials and workmanship until the expiration of the warranty period. Bunchball does not warrant that the operation of Service shall be uninterrupted or error free, that all defects can be corrected, or that Service meets Customer’s requirements, except if expressly warranted by Bunchball in its quote. Support Services are available for separate purchase and the Support Options are identified at the Product Notice”, or some similar language.

Section 8. **Confidentiality.** Except as expressly provided herein, each party that receives (the "Receiving Party") nonpublic information and know-how of the other party (the “Disclosing Party”) disclosed or acquired by the Receiving Party pursuant to or in connection with this Agreement, which is either designated as proprietary and/or confidential or, by the nature of the circumstances surrounding disclosure, ought in good faith to be treated as proprietary and/or confidential by the Receiving Party will retain such information in confidence ("Confidential Information"). Each party will retain in confidence the terms of this Agreement, provided, that each party may disclose the terms and conditions of this Agreement to its legal and financial consultants in the ordinary course of its business and subject to the confidentiality obligations contained herein. Each Receiving Party agrees to use reasonable best efforts to protect the Confidential Information of the Disclosing Party and, in any event, to take precautions at least as great as those taken to protect its own confidential information of a similar nature. The foregoing restrictions will not apply to any information that (a) was known by the Receiving Party prior to disclosure thereof by the Disclosing Party, (b) was in or entered the public domain through no fault of the Receiving Party or wrongdoing of a third party, (c) is disclosed to the Receiving Party by a third party legally entitled to make such disclosure without violation of any obligation of confidentiality, (d) is required to be disclosed by applicable law (but in such event, only to the extent required to be disclosed), (e) is independently developed by the Receiving Party without reference to any Confidential Information of the Disclosing Party, or (f) is reasonably necessary to enforce the terms of this Agreement. Upon request of the Disclosing Party, or in any event upon any termination or expiration of the Term, each Receiving Party will return to the other all materials, in any medium, which contain, embody, reflect or reference all or any part of any Confidential Information of the other party. Each party acknowledges that breach of this provision by it would result in irreparable harm to the other party, for which money damages would be an insufficient remedy, and therefore that the other party will be entitled to seek injunctive relief to enforce the provisions of this Section 8. Notwithstanding the foregoing, the Nitro Data on an aggregate, non-individual, and non-personally identifiable basis shall not be deemed Confidential Information of Customer.

Section 9. **Miscellaneous**

9.1. **LIMITATION OF LIABILITY.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY PUNITIVE, CONSEQUENTIAL, SPECIAL OR OTHER INDIRECT DAMAGES, AND IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY ARISING OUT OF OR IN
CONNECTION WITH THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID OR PAYABLE BY CUSTOMER TO BUNCHBALL UNDER THIS AGREEMENT DURING THE THREE (3) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY.

9.2. Compliance with Laws. In its performance under this Agreement, each party will comply with all applicable laws and other requirements; provided, that the Customer will be solely responsible for compliance with any gift certificate, unclaimed property, money transmitter, banking, anti-money laundering, or other financial services laws, sweepstakes, gambling or promotional laws, and other general consumer protection laws.

9.3. Assignment. Neither party may assign this Agreement, in whole or in part, without the other party’s prior written consent, which consent will not be withheld unreasonably, except that Bunchball may assign this Agreement without consent to any entity in connection with any merger, consolidation, asset purchase, change of control, or other reorganization involving Bunchball.

9.4. Governing Law; Jurisdiction. This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of California, without reference to its choice of law rules to the contrary. The parties consent to the nonexclusive jurisdiction of the state and federal courts located in the county of Santa Clara, California.

9.5. Entire Agreement; Modifications. This Agreement and any applicable Order, SOW or SLA constitute the entire agreement, and supersede any and all prior agreements, between Bunchball and Customer with respect to the Bunchball Services and Bunchball Technology. No amendment, modification or waiver of any of the provisions of this Agreement or any applicable Order, SOW or SLA will be valid unless set forth in a written instrument signed by an officer the party to be bound thereby.
Bunchball Service Level Agreement

This Service Level Agreement (the “SLA”) sets forth certain additional terms and conditions (which supplement the terms and conditions set forth in Bunchball's Master Services Agreement) under which Bunchball will provide hosting, maintenance and technical support for the Bunchball Services. All terms not otherwise defined herein have the meanings given to them in the Agreement. This SLA was last updated on September 27, 2016.

1. Definitions

1.1 “Patch” shall mean a fix to equipment and/or software to resolve an Error.

1.2 "Error" shall mean a reproducible instance of an error of any kind in the operation of the Bunchball Services or the inability of the Customer or its End Users to use the Bunchball Services.

1.3 "Error Resolution" shall mean Bunchball providing a solution to an Error in the form of a Patch or other fix or workaround that is reasonably acceptable to Customer.
## 2. Response Times; Status Updates and Error Resolutions

2.1 Bunchball will provide the following Response Times, Status Updates and Error Resolutions for each Error reported by the Customer under the procedure set forth below:

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Response Time</th>
<th>Status Updates</th>
<th>Target Error Resolution Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity Level 1: Critical. The Error is having a critical impact on Customer's ability to operate the Program.</td>
<td>1 hour; work commenced immediately</td>
<td>Once every hour until issue resolution</td>
<td>1 day</td>
</tr>
<tr>
<td>Severity Level 2: Severe. The Error is having a severe impact on Customer's ability to operate the Program, but there is a capacity to maintain necessary business operations.</td>
<td>3 hours</td>
<td>Once every 5 business days</td>
<td>Next scheduled release</td>
</tr>
<tr>
<td>Severity Level 3: Moderate. The Error is having a medium-to low impact on Customer's ability to operate the Program that involves partial, non-critical functionality loss. Customer's operations are impaired but functioning.</td>
<td>1 business day</td>
<td>Once every 10 business days</td>
<td>Within the next 3 scheduled releases</td>
</tr>
<tr>
<td>Severity Level 4: Cosmetic. Superficial problem not preventing delivery of the Bunchball Service(s).</td>
<td>2 business days</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
2.2 General usage questions will be responded to within two (2) business days and treated with a lower priority, unless questions directly impact work timelines or implementation of critical functionality.

2.3 Bunchball shall report any unscheduled errors or server failures to Customer whether or not they impact Customer's program and/or they are reported by Customer.

### 3. Planned Outages

<table>
<thead>
<tr>
<th>Type</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planned Maintenance</td>
<td>Total of 8 hours per each one month period.</td>
</tr>
<tr>
<td></td>
<td>Bunchball will notify Customer no less than 72 hours in advance of any such planned outages impacting the Bunchball Services.</td>
</tr>
<tr>
<td></td>
<td>Bunchball will ensure that planned outages take place between the hours of 9 PM and 5 AM PST on Friday or Saturday evenings.</td>
</tr>
<tr>
<td>Emergency Maintenance</td>
<td>Total of 2 hours per each one month period.</td>
</tr>
<tr>
<td></td>
<td>Bunchball will notify Customer no less than 24 hours in advance of any such planned outages impacting the Bunchball Services.</td>
</tr>
<tr>
<td></td>
<td>Bunchball will ensure that planned outages take place between the hours of 9 PM and 5 AM PST.</td>
</tr>
</tbody>
</table>
4. SLA Exclusions

This SLA does not cover resolution of Errors where such Errors result from (i) the Program Data as transmitted by End Users (e.g., via Client Flash Applications) or Customer Servers to Bunchball Servers, or (ii) the failed transmission of the Program Data.

5. Reporting and Customer Requirements

5.1 If Customer discovers an Error, Customer must report the Error to Bunchball including the nature of the problem/issue. Likewise, if an Error event is detected by Bunchball, Bunchball must report/document to Customer the nature of the problem/issue. If the Error is of a Critical nature, the discovering party will first contact the emergency contact of the other Party, report the issue, then follow up with an email documenting the Error, per the instructions below.

If the error is of a CRITICAL nature:
The 24/7 critical support email address is escalations@alerts.bunchball.com. In the subject of your email, include the word "EMERGENCY". Customer to provide list of approved senders; only email from these senders will go through. This starts an escalation procedure. This email address should only be used for critical issues. Issue should also be logged within the Bunchball Support Portal.
If the error is NOT CRITICAL:
Non-critical issues should be logged in the Bunchball Support Portal as per normal procedures.
The problem must be detailed as much as possible, specifically including:

i. Date Problem Identified

ii. Problem Title

iii. Severity Level – As indicated in Section 2.1

iv. Reported By (this is the person who discovered the problem / issue)

v. Detailed Problem Description - including the steps leading up to the problem occurrence
vi. **Impact** – this is the impact the problem has on the Customer services and/or business. This is very important and will help Bunchball and the business owners understand why this problem / issue is at the severity level chosen.

vii. **Possible Reasons** – any ideas on why the problem is occurring. This may or may not be known.

viii. **Possible Solutions** – this may or may not be known.

6. **Service Availability**

6.1 **Uptime**

Bunchball will ensure that Bunchball Services are operational and available to Customer 99.9% of the time, as calculated on a monthly basis. This excludes maintenance as set forth in Section 3.

6.2 **Credits**

In the unlikely event that Bunchball fails to meet its Uptime for any calendar month, Customer shall be eligible to receive additional days of service, free of charge, under Customer’s Master Services Agreement with Bunchball (the “Service Credit”) as follows:

<table>
<thead>
<tr>
<th>Monthly Uptime Percentage</th>
<th>Days of service to be added to term of License Agreement at no additional charge to Customer</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;99.9% - &gt; 99.0%</td>
<td>3</td>
</tr>
<tr>
<td>&lt;99.0% - &gt; 95.0%</td>
<td>7</td>
</tr>
<tr>
<td>&lt; 95.0%</td>
<td>10</td>
</tr>
</tbody>
</table>

In order to be eligible to receive a Service Credit, Customer must request such Service Credit no later than thirty (30) days following the end of any month in which Customer believes that the Uptime was not met. Request must include applicable estimated downtimes, and must be submitted to the Bunchball Support Portal. Service Credits not requested within such thirty (30) day period will be automatically forfeited. Service Credits shall be Customer’s sole remedy for Bunchball’s failure to meet Uptime. Service Credits shall not be redeemable for cash.