

**GUIDESPARK, INC.  
MASTER SUBSCRIPTION AGREEMENT**

This Master Subscription Agreement (“MSA”) is between GuideSpark, Inc., (“Company”) and GuideSpark, Inc. (“GuideSpark”). The MSA consists of the terms and conditions set forth below and any attachments or exhibits identified below. This MSA and any Order Forms or Statements of Work that reference this MSA constitute the entire agreement between the parties (“Agreement”).

This Agreement permits Company to (1) purchase a subscription to software-as-a-service products and related services from GuideSpark pursuant to order forms executed by GuideSpark and Company referencing this Agreement, substantially in the form of Exhibit A (“Order Form(s)”) and/or (2) use the Software Service (defined below) and Products (defined below). This MSA and any attachments or exhibits identified below will govern purchases made by Company from GuideSpark and/or use of the Software Service and Products by Company.

**ATTACHMENTS**

1. Ex. A: Form of Order Form
2. Ex. B: Service Level Agreement
3. Ex. C: Support

The following exhibit(s) are incorporated and made a part hereof by reference:

4. See GuideSpark Products and Services Description at <http://www.guidespark.com/product-description-terms>

Company herewith confirms that Company has had access to all parts of and read the agreement(s) and/or exhibits incorporated by reference above.

This Master Subscription Agreement has been accepted and agreed to by the Authorized Representative of each party on the date stated below each signature:

[Prospect Name]  
[Prospect Address]  
[Prospect Address]

**GUIDESPARK, INC.**  
1400A Seaport Blvd., Suite 500  
Redwood City, CA 94063

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Valerie Burman

Title: \_\_\_\_\_

Title: Chief Financial Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**1. Definitions.**

“Affiliate” means an entity that, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with a party hereto. As used in this definition, “control” means the power to direct the management or affairs of an entity, and “ownership” means the beneficial ownership of 50% or more of the voting equity securities or other equivalent voting interests of the entity.

“Authorized Representative” means an individual who has the legal authority to bind the entity entering into this Agreement, including the authority to bind any Affiliates that purchase a Subscription pursuant to an Order Form under this Agreement.

“Company Data” means any data of any type that is submitted by or on behalf of Company to GuideSpark.

“Company Trademarks” means Company’s name and/or logos.

“Compliance” means that the Software Service is performing in substantial conformance with any criteria specified in the applicable Order Form or Documentation.

“Content” means online digital media content such as audio, video, multimedia, data, text, images, and documents, that is provided by GuideSpark to Company or accessed or collected by Company in connection with Company’s use of the Software Service, including without limitation all data, information or other materials that GuideSpark obtains from third parties and provides or otherwise makes available to Company hereunder. The Promo Templates are not Content.

“Contractor” means any third party employed or retained by either party to perform services on behalf of such party.

“Documentation” means any user manuals, reference guides, usage instructions and other descriptions related to the Software

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GuideSpark, Inc. Master Subscription Agreement (rev. 6-2017)

Service provided by GuideSpark to Company or to any other Users of the Software Service from time to time to explain the intended functionality of the Software Service and to assist in the use of the Software Service.

**“Intellectual Property Rights”** means any and all right, title and interest in and to any and all trade secrets, patents, copyrights, service marks, trademarks, know-how, trade names, rights in trade dress and packaging, moral rights, rights of privacy, publicity and similar rights of any type, including any applications, continuations or other registrations with respect to any of the foregoing, under the laws or regulations of any foreign or domestic governmental, regulatory or judicial authority.

**“Permitted Users”** means the cumulative number of a Company’s employees/participants eligible to access the Software Service as set forth in the applicable Order Form. Permitted Users shall be determined based on numbers reported by Company to GuideSpark or on publicly available information.

**“Professional Services”** means the professional services to be performed by GuideSpark for Company, as further described in one or more Order Forms. For clarity, services to develop custom Content for Company under an Order Form is an example of Professional Services. Professional Services do not include the provision of the Software Service.

**“Products”** means (a) the Content, (b) the interactive content experiences, including digital documents, polls, quizzes, etc., provided by GuideSpark through the Software Service (c) the text-based message service offered by GuideSpark, (d) the Promo Templates, and (e) any other offerings provided by GuideSpark from time to time (whether for free/gratis or for a monetary fee). For clarification, Company acknowledges and agrees that any offering which is provided for free/gratis, which may or may not be formalized in an Order Form, shall continue to be governed by the terms and conditions of this MSA and shall be for a limited period of free use not to exceed the lesser of the specified term set forth in the Order Form or one (1) year.

**“Promo Templates”** means the promotional materials (including but not limited to, posters, post cards, stationary, web banners, gif banners, emails and email banners which GuideSpark may revise or expand from time to time) created by GuideSpark’s design team for use by the Company to increase employee awareness of its benefits, financial and other employee programs.

**“Software Service”** means the online software-as-a-service product(s) described in the Order Form, including any associated offline components and all related Documentation.

**“Subscription”** means a subscription to the Software Service and Support.

**“Subscription Term”** means the term of a Subscription as set forth in the applicable Order Form.

**“Support”** means the technical support services provided by GuideSpark as further described in Exhibit B (Service Level Agreement) and Exhibit C (Support) and GuideSpark Products and Services Description @ <http://www.guidespark.com/product-description-terms>

**“Training”** means the training services provided by GuideSpark as set forth in the applicable Order Form.

**“User”** means an individual who is authorized by Company to use the Software Service. Users may include but are not limited to Company employees and their family members, consultants, Contractors and agents, and specific individuals authorized by Company.

**“User Data”** means any data of any type that is submitted by or on behalf of a User to GuideSpark in connection with use of the Software Service.

## 2. Software Service.

2.1 Provision of Software Service. Users may access and use the Software Service for Company’s internal business purposes.

2.2 Orders. Each Order Form will be substantially in the form attached as Exhibit A and will incorporate by reference the provisions of this Agreement as though those provisions were set forth therein in their entirety. Where appropriate, Orders may also be placed via a Statement of Work (“SOW”). All references herein to **“Order Forms”** shall also apply to orders placed with an SOW.

2.3 Company Responsibilities. Company shall (i) be responsible for Users’ compliance with this Agreement, (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Software Service, and notify GuideSpark promptly of any such unauthorized access or use, and (iii) use the Software Service only in accordance with any Documentation provided by GuideSpark and applicable laws and government regulations.

2.4 Login Information. If Company requests that GuideSpark enable Company to create a login ID and password for Users to access the Software Service (**“Login Information”**), Company shall keep all Login Information confidential and not share Login Information with third parties unless otherwise permitted hereunder. Company is responsible for all activity occurring under Users’ Login Information. GuideSpark has no obligation or responsibility with regard to use, distribution, disclosure, or management of Login Information.

2.5 Service Updates. GuideSpark may, from time to time, modify or update the Software Service (**“Updates”**).

2.6 General Restrictions. Company will not: (i) make the Software Service or Products available to, or use any Software Service or Products for the benefit of, anyone other than Company or Users; (ii) decompile, disassemble, or otherwise reverse engineer the Software Service (except to the extent that applicable law prohibits or restricts reverse engineering restrictions); (iii) sell, resell, rent, lease, or distribute the Software Service or Products (other than to Company or Users as permitted by this Agreement); (iv) use the Software Service (or any portion thereof) for time sharing purposes; (v) copy the Software Service or any part, function, feature or user interface thereof; (vi) frame or mirror any part of the Software Service or Products, other than framing on Company’s own intranet or otherwise for your own internal business purposes as permitted by this Agreement; (vii) access any Software Service or Products to build a competitive product or service; (viii) create any derivative works based on the Software Service or Products, or

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(ix) remove any copyright or proprietary notices contained in the Software Service or Products.

### 3. License and Ownership of Intellectual Property.

3.1 GuideSpark License to Products. GuideSpark hereby grants Company a worldwide, non-exclusive, non-transferable (except as provided for in Section 13.1 (Assignment)) license, for the relevant Subscription Term, to use any Products provided by GuideSpark to Company for Company's internal business purposes subject to the restrictions set forth in this Agreement.

3.2 Company License to Data. Company hereby grants GuideSpark a worldwide, royalty-free, non-exclusive, non-transferable (except as provided for in Section 13.1 (Assignment)) license for the relevant Subscription Term, to use any Company Data and User Data for the purposes of creating and providing the Software Service to Company.

3.3 Ownership of Intellectual Property - Software Service, Products and Data. GuideSpark and its licensors will retain ownership of all Intellectual Property Rights in the Software Service and the Products. GuideSpark will also own all right, title and interest in and to any Products that GuideSpark creates, develops or otherwise delivers to Company in connection with the Software Service hereunder, and hereby provides Company with a worldwide, non-exclusive, non-transferable license to use those customized portions of the Products for Company's internal business use for the relevant Subscription Term. Notwithstanding the foregoing, as between GuideSpark and Company, Company owns all right, title and interest (including all Intellectual Property Rights) in and to any Company software, Company systems, Company Data, Company Confidential Information, Company Trademarks or other Company materials provided by Company to GuideSpark or otherwise accessed by GuideSpark in connection with this Agreement.

3.4 Data. As between GuideSpark and Company, Company exclusively owns all rights, title and interest in and to all Company Data and all User Data. GuideSpark shall have the right to access and use the Company Data and the User Data solely to perform its obligations in accordance with the terms of this Agreement during the Subscription Term, and as otherwise expressly permitted in this Agreement. GuideSpark reserves the right to develop and commercialize benchmarks and measures based on Aggregated Data. "**Aggregated Data**" shall mean User Data (i) anonymized, and not identifiable to any person or entity, and (ii) presented in a manner from which Company's or User's identity may not be derived.

3.5 Reservation of Rights - Software Service and Products. Subject to the limited rights granted hereunder, GuideSpark and its licensors reserve all of its/their right, title and interest in and to the Products and Software Service, including all of GuideSpark's and GuideSpark's licensors' Intellectual Property Rights. No rights are granted to Company except as expressly set forth herein.

3.6 GuideSpark License to Promo Templates. Subject to the terms of this Agreement, GuideSpark grants Company a limited, non-exclusive, non-transferrable license for the Term to use, copy, modify, display and distribute the Promo Templates, solely for the Purpose described in the next sentence. The "**Purpose**" means the purpose of increasing Company workforce awareness of GuideSpark's online training programs. Company

may modify each Promo Template in a limited manner, solely by adding the Company's logos, other trademarks and business appropriate text, as applicable, into each Promo Template. The text added by Company to each Promo Template may not: (a) be text intended to shock, insult or offend others or (b) contain any statement disparaging of, or reflecting unfavorably upon, GuideSpark. Company shall not modify the Promo Templates, other than as explicitly stated above. Company shall not distribute the Promo Templates to any third party, other than its own employees and consultants with a need to use the Promo Templates for the Purpose. Company shall not sell or otherwise commercialize the Promo Templates. Notwithstanding anything to the contrary herein, GuideSpark may terminate the license to the Promo Templates immediately if Company breaches the terms and restrictions set forth in this Section 3.6. Upon termination or expiration of this Agreement, Company shall discontinue all use, display and distribution of the Promo Templates and shall take down all tangible and online content incorporating the Promo Templates.

3.7 Ownership of the Promo Templates. GuideSpark retains all right, title and interest in the Promo Templates; subject to Company's ownership of the Company Trademarks and text inserted by Company into the Promo Templates.

### 4. Fees.

4.1 Invoices. The applicable Order Form will set forth the fees for the Software Service. GuideSpark will invoice Company in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. Both parties are responsible for maintaining complete and accurate billing and contact information. At a minimum, each invoice will identify: (i) this MSA, (ii) the applicable Order Form, (iii) the applicable Subscription Term, (iv) name and description of the Software Service, and (v) the total dollar amount owed. All fees paid hereunder are non-refundable unless this Agreement is terminated as mutually agreed under Section 6.2 or finally adjudicated under Section 6.2.

4.2 Expenses. Company will not be responsible for any expenses incurred by GuideSpark unless (i) the relevant Order Form so provides, or (ii) reimbursement for any such expenses has been approved in advance in writing by Company.

4.3 Payment; Taxes. All invoiced charges are payable in U.S. Dollars only. Unless otherwise stated, GuideSpark's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any governmental body (collectively, "**Taxes**"). Company is responsible for paying all Taxes associated with its purchases hereunder. If GuideSpark has the legal obligation to pay or collect Taxes for which Company is responsible under this paragraph, the appropriate amount will be invoiced to and paid by Company, unless Company provides GuideSpark with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, GuideSpark is solely responsible for taxes assessable against it based on its income, property or employees.

4.4 Overdue Charges. If any charges are not received from Company by the due date, then upon written notice from GuideSpark to Company, any such charges may accrue late interest at the rate of 1.0% of the outstanding balance per month,

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or the maximum rate permitted by law, whichever is lower, from the date that payment was due until the date paid.

4.5. **Suspension of Service and Acceleration.** If any amount owing by Company under this Agreement is thirty (30) or more days overdue, GuideSpark may, without limiting its other rights and remedies, accelerate Company's unpaid fees so that all such obligations become immediately due, and suspend Company's access to the Software Service and Products until those amounts are paid in full.

4.6. **Payment Disputes.** GuideSpark will not exercise its rights under Section 4.4 (Overdue Charges) or 4.5 (Suspension of Service and Acceleration) if the applicable charges are under good-faith dispute and Company is cooperating diligently to resolve the dispute.

4.7. **Fee Increases.** Upon one hundred twenty (120) days' written notice prior to the commencement of a renewal term, GuideSpark may increase the rates charged on any Order Form purchased hereunder. That price increase will not exceed the greater of (a) the Consumer Price Index applicable to the Software Service, or (b) five percent (5%), and that price increase will be effective upon commencement of that upcoming renewal term. If Company exceeds the number of Permitted Users set forth in the applicable Order Form by more than ten percent (10%) during a given term, GuideSpark may increase price accordingly upon written notice. That price increase will be effective upon the commencement of the upcoming renewal term, or upon one hundred twenty (120) days, whichever is sooner.

## 5. Education and Third Party Links.

5.1 **Education Only Product.** Company acknowledges that: (i) THE SOFTWARE SERVICE AND PRODUCTS ARE NOT INTENDED TO BE LEGAL, TAX, FINANCIAL ADVICE OR ADVICE OF ANY KIND; GUIDESPARK IS NOT A FINANCIAL PLANNER, BROKER OR TAX ADVISOR; (ii) the Software Service and Products are for educational purposes only and should not be considered personalized legal, financial or tax advice; (iii) the financial, benefit and investment strategies presented in the Software Service and Products, if any, were prepared without regard to any particular User's investment objectives or financial or benefit situation, and may not be suitable for everyone; (iv) each User's financial and benefit situation is unique, and any information or advice obtained through the Software Service and Products may not be appropriate for a particular User's situation; and (v) before implementing any financial or benefit decisions or strategies, each User should consider obtaining additional information and advice from their accountant or other financial advisers who are fully aware of their individual circumstances. GuideSpark makes no warranty or representation as to the accuracy, timeliness or completeness of any Products made available through the Software Service. Company acknowledges that prior to GuideSpark making any Products available to Company's Users, Company will review and approve all such Products. GuideSpark will not be responsible for updating or modifying Products during any applicable Subscription Term to reflect changes in applicable laws and regulations, but will only make those changes after the specific written request of Company based on information provided to GuideSpark by Company.

5.2. **Links.** At Company's request, GuideSpark may provide links to other third-party Web sites or resources as part of the Software Service. GuideSpark is not responsible, and will not be

liable, for the contents, products or services on any third party site, and the inclusion of any link does not imply that GuideSpark endorses those third party sites.

## 6. Term and Termination.

6.1 **Term.** This Agreement is effective as of the last date the Agreement has been signed and continues until all Subscriptions granted in accordance with this Agreement have expired or been terminated, unless terminated earlier in accordance with this Section 6. Each Subscription commences on the start date specified in the "Term" section of the applicable Order Form and continues for the Subscription Term specified therein. If the applicable Order Form does not contain a "Term" provision, the default initial term for Subscription Products in that Order Form is three (3) years from the subscription start date contained in the applicable Order Form and will automatically renew thereafter, at GuideSpark's then-current rates, for three (3) year successive terms (renewal terms) after the initial term unless either party provides written notice to the other party of an intent to terminate the Agreement ninety (90) days prior to the commencement of a renewal term, in which event that termination will be effective upon the expiration of the then-current term.

6.2 **Termination for Cause.** Either party may terminate this Agreement for cause if the other party fails to cure any material breach of this Agreement within thirty (30) days after written notice of that breach.

6.3 **Not Exclusive Remedy.** Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

## 7. Representations and Warranties.

 GuideSpark represents and warrants as follows:

7.1 **General Warranties.** GuideSpark has with respect to this Agreement and each Order Form (i) all requisite legal and corporate power to execute, deliver and perform its obligations under those agreements; (ii) taken all corporate action necessary for the authorization, execution and delivery of those agreements; (iii) no agreement or understanding with any third party that interferes with or will interfere with its performance of its obligations under those agreements; (iv) obtained and will maintain all rights, approvals and consents necessary to perform its obligations and grant all rights and licenses granted to Company under those agreements; and (v) taken all action required to make those agreements legal, valid and binding obligations of GuideSpark.

7.2 **Software Service Performance Warranty.** The Software Service is and will be in Compliance. GuideSpark will provide all commercially reasonable services necessary to enable GuideSpark to comply with the warranties set forth in this Agreement.

7.3 **Updates.** GuideSpark represents that Updates will not materially decrease the functionality of the Software Service.

7.4 **Compliance with Laws.** GuideSpark's business and performance under this Agreement is and will be in compliance with all applicable U.S. federal, state and local laws and government rules and regulations.

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7.5 No Harmful Material. Company's use or access of the Software Service will not cause any viruses, worms, time bombs, Trojan horses or other harmful, malicious or destructive code to be installed or introduced on Company's computer, telecommunication or other information systems ("**Systems**").

7.6 No Disruption. Except to the extent necessary for Scheduled Maintenance, and subject to the provisions of Section 4.5, GuideSpark, its agents or employees or anyone acting on its behalf, will not disable or interfere, in whole or in part, with Company's use of or access to the Software Service, Company Data or any software, hardware, Systems or data owned, utilized or held by Company without the written permission of a corporate officer of Company.

7.7 Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 7, THE SOFTWARE SERVICE AND PRODUCTS ARE PROVIDED WITH NO OTHER WARRANTIES OF ANY KIND, AND GUIDESPARK DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. GUIDESPARK FURTHER DISCLAIMS ALL LIABILITY AND/OR INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

**8. Company's Representations and Covenants.** The Company (a) represents that it is an entity duly organized and validly existing under the laws of its jurisdiction of organization and that it has all requisite legal and corporate power to execute, deliver and perform its obligations under this Agreement and each Order Form; and (b) covenants that it will not upload, record, publish, post, link to, or otherwise transmit or distribute Company Data that: (i) infringes or violates the copyright, trademark, service mark, trade name, trade secret, or other Intellectual Property Rights of any third party or GuideSpark, or any rights of publicity or privacy of any party; (ii) contains any viruses, Trojan horses, worms, time bombs, or any other similar software, data, or programs that may damage, interfere with, surreptitiously intercept, or expropriate any system, data, information, or property; or (iii) violates any applicable law, statute, ordinance, or regulation.

## 9. Limitation of Liability.

9.1 NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

9.2 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, GUIDESPARK'S ENTIRE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT ACTUALLY PAID BY COMPANY TO GUIDESPARK UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING A CLAIM FOR DAMAGES.

9.3 THE PROVISIONS OF SECTION 9.2 WILL NOT APPLY TO ANY CLAIM UNDER SECTION 10 (INDEMNIFICATION) OR SECTION 11 (CONFIDENTIAL INFORMATION).

9.4 The parties agree that the limitations specified in this Section 9 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

## 10. Indemnification.

10.1 Indemnification by GuideSpark. If a third party makes a claim against Company, its Affiliates or their respective Contractors, officers, directors or employees (the "**Company Indemnitees**") that the Software Service or the Products provided by GuideSpark, except as otherwise provided in this Section 10.1 (collectively, the "**Software**"), infringes its Intellectual Property Rights (a "**Company Claim**"), GuideSpark will defend the Company Indemnitee against the Company Claim and indemnify the Company Indemnitee from the damages, liabilities, costs and expenses awarded by the court to that third party or the settlement agreed to by GuideSpark. Should the Software become, or in GuideSpark's opinion be likely to become, the subject of a Company Claim, GuideSpark may, at GuideSpark's sole option and expense: (i) procure for Company the right to continue to use the Software as contemplated hereunder, (ii) modify or replace the Software with equally suitable, compatible and functionally equivalent non-infringing software services subject to Company's approval, which shall not be unreasonably withheld, or (iii) terminate the Agreement and refund to Company any prepaid and unused Fees. Notwithstanding the foregoing, GuideSpark will have no obligations under this Section 10 to the extent any infringement claim is based upon or arising out of (i) a Company Indemnitee's modification of the Software Service or combination or use of the Software Service with products or services not supplied by GuideSpark or approved in writing by GuideSpark in advance of that combination, (ii) a Company Indemnitee's use of the Software Service not in accordance with any applicable Documentation provided in writing by GuideSpark, or outside the scope of any license granted under this Agreement, or (iii) Company Data or User Data.

10.2 Indemnification by Company. If (a) a third party makes a claim against GuideSpark, its Affiliates or their respective Contractors, officers, directors or employees (the "**GuideSpark Indemnitees**") that Company Data or User Data infringes its Intellectual Property Rights or violates any law or regulation, (b) any User makes a claim against a GuideSpark Indemnitee related to or in connection with or as a result of that User's access to the Software Service, including without limitation, User acting or failing to act on a financial or benefit decision or strategy, (c) a third party, including Users, makes a claim against a GuideSpark Indemnitee arising from the Company's misuse of the Products, or (d) a third party, including Users, makes a claim against a GuideSpark Indemnitee related to the text-based message service offered by GuideSpark, including any contact information (i.e., phone numbers) provided by the Company to GuideSpark (items (a), (b), (c) and (d) collectively, a "**GuideSpark Claim**"), Company will defend the GuideSpark Indemnitee against the GuideSpark Claim and indemnify the GuideSpark Indemnitee from the damages, liabilities, costs and expenses awarded by the court to the third party or the settlement agreed to by Company.

10.3 Process and Remedies. A party seeking indemnification (an "**Indemnitee**") may obtain indemnification for a claim covered under Section 10 on condition that the Indemnitee (a) gives the party providing indemnification (the "**Indemnitor**") prompt written notice of any such claim, (b) permits the

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Indemnitor to control and direct the defense or settlement of any such claim, and (c) provides the Indemnitor all reasonable assistance (at the expense of the Indemnitor) in connection with the defense or settlement of any such claim; provided that failure to provide the notice specified in (a) above will relieve the Indemnitor from its liability or obligation hereunder only to the extent of any material prejudice directly resulting from that failure; and provided, further, that the Indemnitor will not agree to any settlement or compromise under (b) above that would require the Indemnitee to make any payments, bear any obligations or admit any liability unless the Indemnitor obtains the Indemnitee's prior written approval, which shall not be unreasonably withheld. An Indemnitee may participate in the defense of any claims by counsel of its own choosing, at its cost and expense.

10.4 Exclusive Remedy. This Section 10 states the Indemnitee's sole remedy against the Indemnitor for any type of third party claim described under this Section 10.

## 11. Confidential Information.

11.1 Confidential Information. Each party ("**Receiving Party**") agrees that all code, inventions, know-how, business, technical and financial information it obtains from the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), on condition that (i) it is identified in writing as confidential at the time of disclosure, (ii) if disclosed verbally, is identified as confidential in writing within thirty (30) days of the disclosure; or (iii) should have been reasonably known to the Receiving Party to be Confidential Information. The terms of this Agreement, and any not previously publicly disclosed information about Company's business, finances, information systems, software or technology provided by Company to GuideSpark under this Agreement will be deemed Confidential Information of Company without any marking or further designation. Except as expressly authorized in this Agreement, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation will not apply to information that the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (iv) is independently developed by employees of the Receiving Party who had no access to such information; or (v) is required to be disclosed pursuant to a regulation, law or court order (consistent with Section 11.3). The Receiving Party acknowledges that disclosure of Confidential Information may cause substantial harm for which damages alone may not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party, the Disclosing Party may seek appropriate equitable relief in addition to whatever other remedies it might have at law.

11.2 Return of Materials. Upon termination of the Agreement for any reason, or upon earlier written request by Disclosing Party, Receiving Party will promptly destroy or (if specifically requested) return to Disclosing Party all documents or materials of any nature in Receiving Party's possession, custody or control (regardless of the media in which those documents or materials are stored) that have been furnished by Disclosing Party to Receiving Party except as required by applicable law.

11.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## 12. Access and Data Protection.

12.1 Access to Systems. Unless specifically requested in writing by Company, GuideSpark's Software Service will not integrate with, connect to, or access Company's Systems. Access, if any, to Company's Systems is granted solely to facilitate the business relationship described in this Agreement, and is limited to those specific Systems, time periods, and personnel as are separately designated by Company in writing from time to time. Access is subject to business control and information protection policies, standards, and guidelines as may be provided in writing by Company to GuideSpark.

12.2 Data Protection - Safeguards. GuideSpark will implement and maintain commercially reasonable administrative, physical and technical safeguards to prevent any unauthorized use, access, processing, destruction, loss, alteration, or disclosure of any Company Data or User Data as may be held or accessed by GuideSpark.

12.3 Usage Data. Notwithstanding anything to the contrary in this Agreement, GuideSpark may aggregate and anonymize statistical usage data in a manner that cannot be identified as or in any way related to Company or any User, and use and disclose that aggregated information.

12.4 Notification of Security Breach. GuideSpark will promptly notify Company following discovery of any suspected breach or compromise of the security, confidentiality, or integrity of any Company Data or User Data. Written notification provided under this paragraph will include a brief summary of the available facts, the status of GuideSpark's investigation, and if known and applicable, the potential number of persons affected by release of data relating to such person ("**Affected Persons**"). If applicable, upon written request from Company, GuideSpark agrees to notify the Affected Persons regarding any security breach in a commercially reasonable form approved in writing by Company, at GuideSpark's expense. These notices will be delivered within a reasonable time at Company's direction. GuideSpark agrees that it will not communicate with any third party, including, but not limited to the media, consumers and Affected Persons regarding any security breach without the express written consent and direction of Company except as required by applicable law.

12.5 Further Assurance. At Company's request, GuideSpark will execute and abide by the terms of any agreements as may be required by applicable law.

## 13. General.

13.1 Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party will assign this Agreement (or any part thereof)

without the prior written consent of the other party, except that either party may assign this Agreement without consent in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of its assets and/or voting securities. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 13.1 will be null and void.

13.2 Severability. If any provision of this Agreement is adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

13.3 Governing Law; Jurisdiction and Venue. This Agreement and all related actions and proceedings will be governed by the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts located in the county and state in which the party defending any such suit has its principal place of business.

13.4 Notices. Notices under this Agreement will be sent to the addresses provided in the signature block of this Agreement, or to those others as either party may provide in writing. These notices will be deemed received at those addresses: (i) upon receipt if by personal delivery; (ii) upon receipt if sent by certified or registered U.S. Mail (return receipt requested); (iii) one (1) day after it is sent if by next day delivery by a major commercial delivery service; or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim).

13.5 Amendments; Waivers. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by an Authorized Representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by an Authorized Representative on behalf of the party claimed to have waived.

13.6 Entire Agreement. This Agreement (including all exhibits and referenced Order Forms) is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. For the avoidance of doubt, under no circumstances will the terms, conditions or provisions of any purchase order or other administrative document issued by Company in connection to this Agreement be deemed to modify, alter or expand the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of GuideSpark to object to such terms, provisions, or conditions. The terms of this Agreement shall supersede the terms contained in any purchase order or other administrative document issued by Company.

13.7 Relationship of parties. The parties are entering this Agreement as independent contracting parties. This Agreement creates no relationship of partnership, joint venture, employment, franchise or agency between the parties. Neither GuideSpark nor

any of its employees or subcontractors will be eligible for any benefits normally provided by Company to its employees. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

13.8 Force Majeure. Either party's performance of any part of this Agreement will be excused to the extent that it is unable to perform due to natural disasters, terrorism, riots, insurrection, war, extraordinary governmental action, material labor strikes (excluding strikes by the party's own workforce), or any other cause that is beyond the reasonable control of that party (the "**Affected Party**"), not avoidable by reasonable due diligence, and on condition that the cause is not attributable to the Affected Party (a "**Force Majeure Event**"). Upon the occurrence of a Force Majeure Event, the Affected Party will promptly notify the other party of the Force Majeure Event, including an estimate of its expected duration and probable impact on the performance of the Affected Party's obligations under this Agreement. In addition, the Affected Party will (i) exercise commercially reasonable efforts to mitigate damages to the other party and to overcome the Force Majeure Event and (ii) continue to perform its obligations under this Agreement to the extent it is able. If any failure or delay caused by a Force Majeure Event continues for ten (10) days or longer, the party unaffected by the event will have the right to terminate this Agreement without cost or liability upon notice to the Affected Party and to receive a refund of all pre-paid fees for any performance not yet delivered.

13.9 Marketing. Notwithstanding anything to the contrary in this Agreement, GuideSpark may identify Company as a GuideSpark customer by listing Company's name and/or logo in sales presentations, marketing materials, and on GuideSpark's website, subject to Company's trademark and logo guidelines as provided in writing by Company to GuideSpark. GuideSpark agrees that unless Company provides explicit written consent, such usage of Company's name and/or logo will not imply any endorsement of GuideSpark by Company.

13.10 Counterparts; Electronic Signature. This Agreement and any accompanying Order Forms may be executed in two or more counterparts, each of which will be considered an original but all of which together will constitute one agreement. If executed by electronic signature, it shall be equally binding as an original copy executed in ink by both parties.

13.11 Order of Precedence. If a term in an Order Form conflicts with a term in this MSA, the provisions of this MSA will prevail unless the relevant Order Form specifically references this MSA and states that the term in the relevant Order Form will prevail.

13.12 Survival. Sections 1, 3.3, 3.5, 3.7, 4, 5.1, 6.3, 7, 8, 9, 10, 11, and 13 (including any other sections which by their terms shall survive) will survive any termination or expiration of this Agreement.

13.13 Effectiveness; Date. This Agreement will become effective when all parties have signed it. The date of this Agreement will be the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature).

## CONFIDENTIAL



**EXHIBIT A  
Order Form # 001 - June 2017**

Subject to Master Subscription Agreement between GuideSpark and Company

**1.1 COMPANY INFORMATION**

Company Name: [Prospect Name]	Company Address: [Prospect Address]
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**1.2 SUBSCRIPTION PRODUCT INFORMATION**

**PERMITTED USERS: <1000**

PRODUCT*	QUANTITY	PRODUCT LINE	START DATE	END DATE	TOTAL PRICE	NET ANNUAL PRICE
FOR (= 'TRUE')						

\* See <http://www.guidespark.com/product-description-terms> for GuideSpark Products and Services Description, which are incorporated herein by reference.

**1.3 ONE-TIME FEE INFORMATION**

PRODUCT	QUANTITY	LIST PRICE	NET PRICE
FOR (= 'TRUE')			

**1.4 TOTALS**

<b>ONE-TIME FEE TOTAL</b>	
<b>ANNUAL SUBSCRIPTION FEE</b>	
<b>TOTAL CONTRACT VALUE</b>	

**1.5 SUBSCRIPTION TERM INFORMATION**

**Term:** The initial term for Subscription Products is the period of time defined by the subscription start and end dates contained in this Order Form and will automatically renew thereafter, at GuideSpark's then-current rates, for three (3) year successive terms (renewal terms) after the initial term unless either party provides written notice to the other party of an intent to terminate the Agreement prior to the Evergreen period set forth herein, in which event that termination will be effective upon the expiration of the then-current term.

Evergreen (90) days prior to the commencement of the renewal term.

Additional Terms:

**1.6 INVOICING INFORMATION**

<b>Payment Terms</b>	Net 30
<b>Payment Frequency</b>	Annually
<b>Currency</b>	USD

This Quote is valid until the last calendar day of the month in the Subscription Start Date listed above.

**CONFIDENTIAL**

GuideSpark, Inc. Master Subscription Agreement (rev. 6-2017)



[Prospect Name]  
[Prospect Address]

**GUIDESPARK, INC.**  
1400A Seaport Blvd. Suite 500  
Redwood City, CA 94063

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Valerie Burman

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Chief Financial Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Email

\_\_\_\_\_  
Date

\_\_\_\_\_  
vburman@guidespark.com

\_\_\_\_\_  
Primary User Contact

\_\_\_\_\_  
Email

\_\_\_\_\_  
Primary User Email

\_\_\_\_\_  
Bill To Contact

\_\_\_\_\_  
Bill To Email

\_\_\_\_\_  
PO Number (if required)

This Quote is valid until the last calendar day of the month in the Subscription Start Date listed above.

**CONFIDENTIAL**

GuideSpark, Inc. Master Subscription Agreement (rev. 6-2017)

## EXHIBIT B

### SERVICE LEVEL AGREEMENT

**Service Availability Objective.** GuideSpark will make commercially reasonable efforts to provide monthly Service Availability of 98% (“**Service Availability Objective**”). Service Availability is defined as the time that the Service is capable of receiving, processing, and responding to requests, excluding (a) Scheduled Maintenance, (b) Company Error Incidents, and (c) Force Majeure Events. Service Availability is calculated as a percentage by dividing the number of minutes the Software Service is available during the applicable month by the number of total minutes in the applicable month, excluding in all cases Scheduled Maintenance, Company Error Incidents, and Force Majeure Event.

#### Definitions.

“**Scheduled Maintenance**” is defined as making changes to the Software or cloud infrastructure during which Users are prevented from using the Software Service. Scheduled Maintenance work will primarily occur during pre-defined maintenance windows, on Fridays from 8:00pm PST to 12:00am PST, and on Saturdays from 7:00pm to 11:00pm PST. Company will generally receive notice via e-mail five (5) days in advance of any Scheduled Maintenance, however GuideSpark reserves the right to perform Scheduled Maintenance during the pre-defined maintenance windows described in this Exhibit B with a minimum of thirty (30) minutes’ notice. GuideSpark will provide Company ten (10) days’ prior notice via e-mail if maintenance is expected to exceed the four (4) hour period. Scheduled Maintenance may infrequently occur outside the pre-defined windows. In that case, GuideSpark will provide Company at least five (5) days’ notice.

“**Company Error Incident**” is defined as any Software Service unavailability resulting from applications, Content, or equipment provided by Company or a User, or the acts or omissions of a User.

“**Force Majeure Event**” is defined in Section 13.8 of the MSA.

**Remedy for Failure to Achieve Service Availability Objective.** At the written request of the Company, and no more than four (4) times per calendar year, GuideSpark will calculate specific Service Availability during each of the three (3) calendar months preceding Company’s request, and provide a report to Company (a “**Service Availability Report**”). In the event that the Service Availability Objective was not met in a given month, then for each day in that month that the duration of the Service unavailability exceeds four (4) hours (excluding (a) Scheduled Maintenance, (b) Company Error Incidents, and (c) Force Majeure Events), the Company may receive a one (1) day credit for the Software Service (a “**Service Credit**”), subject to the Agreement and requirements of this Exhibit B. For purposes of calculating the Service Availability Objective, GuideSpark will only consider the Software Service unavailable if the Company opened a trouble ticket relating to the Service unavailability with the GuideSpark customer support department within three (3) business days of the Service unavailability. To obtain a Service Credit for GuideSpark’s failure to meet the Service Availability Objective, the Company must request that credit in writing no later than ten (10) business days following receipt of the applicable Service Availability Report. In the event of a conflict between the data in the Company’s records and GuideSpark’s records (including the Service Availability Report), the data in GuideSpark’s records shall prevail. Any Service Credits due hereunder will be applied to the Company’s account at the conclusion of the then-current Subscription Term, by extending that Subscription Term by the length of the Service Credits. Notwithstanding the foregoing, if the Software Service was purchased on a monthly or pay-per use basis, Company will receive no Service Credits. The Service Credits offered in this Exhibit B shall be Company’s sole and exclusive remedy for any failure of GuideSpark to meet the Service Availability Objective. Any unused Service Credits will expire upon termination of this Agreement.

**EXHIBIT C****SUPPORT**

**Support.** During each Subscription Term, GuideSpark will provide Company email assistance at support@guidespark.com for general advice and technical support, as well as technical assistance and remediation for operational issues as further described below from 8 am - 5 pm PST, Monday through Friday, excluding national holidays. Support response times are based on the severity level of each issue, and are described generally below.

<b>Severity</b>	<b>Description</b>	<b>Response</b>
1	Urgent: Entire service is unavailable and unusable, and no operations can be completed.	Response: 1 hour Resolution: 8 hours
2	High: Major functionality is not available or service is seriously degraded, and no workaround is available. This includes content that does not play or data that appear corrupted.	Response: 8 hours Resolution: 2 business days
3	Medium: A program error where a suitable workaround exists or the feature is minor and is not required for the User to use the site. Medium severity issues may be deferred at GuideSpark's reasonable discretion.	Response: 1 business day Resolution: 5 business days
4	Low: No impact on the User's experience. Examples include confusing text or a missing graphic on a minor page. Low severity issues may be deferred at GuideSpark's reasonable discretion.	Response: 2 business days Resolution: At GuideSpark's reasonable discretion