



Service Agreement

UTA Contract: 17-2471TP

5/1/2018 *tmp*

THIS AGREEMENT is made as of the date of 2/15/18 between Motivosity, Inc.,

("Motivosity") a Delaware corporation and, Utah Transit Authority (the "Subscriber") a company with a principal place of business at 669 West 200 South, Salt Lake City, UT 84015.

BACKGROUND

Motivosity has developed and is the sole and exclusive owner of a web-based system for the delivery of an employee recognition and engagement program (the "Service").

The Subscriber desires to engage Motivosity for purposes of obtaining benefits for employees of the Subscriber (collectively, the "Users") under the Program on a non-exclusive basis.

Subject to the following terms and conditions and in mutual consideration of the promises made between the parties as contained in this Agreement (the "Agreement"), the parties agree as follows:

1. TERM OF AGREEMENT

- 1.1 The initial term of this Agreement shall commence as of the date of this Agreement and expire on the 1st anniversary date of this Agreement. The initial User count will be 855 priced at \$36 per user per year. At the time of any subsequent renewal, the per user price per year will be updated to reflect then-current standard per user pricing.
- 1.2 Motivosity offers a six-month money-back guarantee to new Subscribers. Within six months of the date of this Agreement, the Subscriber may terminate this Agreement for a full refund. Motivosity will then issue the refund as a check payment within 60 days of written termination as long as all of the following conditions are met:



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1.2.1. The Subscriber has entered the full number of Users into the Service indicated by this Agreement and activated the Service for them for a period of at least two consecutive months.

1.2.2. The Subscriber has enabled peer-to-peer recognition amounts of at least \$5/month for a minimum of two consecutive months during the time that the Users are active in the system.

1.2.3. The Subscriber has enabled digital gift card purchasing in the Service in a way that Users will have access to digital gift card purchasing for at least two consecutive months.

2. FEES, PAYMENT TERMS, AND TAX

2.1 **Fees.** All fees payable by the Subscriber to Motivosity in relation to the purchase of the Motivosity product for use by Users under the Service are due and payable according to section 1.1

2.2 **Renewal.** Subscriber will be invoiced thirty (30) days prior to the Renewal Term. Payment of the invoice will constitute a renewal of this agreement for one year. Failure to pay within twenty (20) days of the anniversary date of this contract will constitute a termination of this agreement. Subscriber may terminate this agreement any time upon written notification. In the event of termination, Subscriber agrees that any True-up Fee as explained below will still be paid. Each Renewal Term invoice will have fees comprised of two components; the annual renewal fee and the true-up fee which will be calculated as follows:

2.2.1. **Renewal Fee** – will be calculated by multiplying current number of active users in Motivosity by the then current per-user annual fee

2.2.2. **True-up Fee** – The true-up fee is the sum of pro-rated individual user fees that are over the last pre-paid number of Users. This is calculated by first obtaining the User count change (X) and then finding the X most recently added Users for the company. The true-up fee is then calculated by summing the pro-rated annual fee for each of those Users.

As an example of how the true-up fee works, Company A started its Subscription with 100 Users at \$36/User on Jan 1. On April 1, Company A adds 40 Users (for a total of 140). On July 1, Company A adds another 20 Users (for

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a total of 160). On December 1, Company A deletes 30 Users (for a total of 130). At renewal time, Company A will have 130 Users. To calculate the true-up, Motivosity will find the 30 most-recently created Users. 10 of those Users were created on April 1 and 20 of those Users were created on July 1. 10 Users have a true up fee of \$27.02 per user, which is equal to $\$36/365 \times 274$ (the number of days in use). 20 Users have a true-up of \$18.04 per user, which is equal to $\$36/365 \times 183$ (the number of days in use). The total true-up fee in this example is \$631. If the number of users decreases, Motivosity will issue a credit upon written request prior to the next renewal.

- 2.3 Payments.** Motivosity reserves the right to suspend or terminate this Agreement and Subscriber's access to the Service if Subscriber is delinquent and remains delinquent more than twenty (20) days after Motivosity notifies Subscriber in writing of such delinquency. Undisputed amounts are subject to interest charges of 1% per month on any outstanding undisputed balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. Subscriber will continue to be charged for Users during any period of suspension. Upon termination of this Agreement for any reason other than default by Motivosity or the activation of the six-month money back guarantee by the Subscriber, Subscriber will be obligated to pay the balance of undisputed amounts computed in accordance with this section 2 and shall not be entitled to receive any pro-rata refund. Subscriber agrees and acknowledges that Motivosity has no obligation to retain Subscriber data and that such Subscriber data may be irretrievably deleted if Subscriber's account becomes delinquent.
- 2.4 Sales Tax.** Motivosity has its headquarters in Orem Utah and in Utah, the Service is taxable. For Utah Subscribers, Motivosity will add the current Utah State + Local taxes to the invoice unless presented with a Utah State Sales and Use Tax Exemption number. Motivosity has no current nexus-creating activities in other states. For out-of-state Subscribers, Motivosity will not collect sales taxes with the following understanding:
- 2.4.1. Subscribers are responsible for declaring their own use taxes with their state agencies according to their local laws

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2.4.2. Several states are presenting changes to laws regarding economic nexus. Some of these changes may have retro-active impact on whether Motivosity should have collected sales tax or should be collecting sales tax in the future

2.4.3. If Motivosity becomes liable for past uncollected sales tax in other states, Subscriber agrees to pay Motivosity the portion of those taxes attributable to its fees for the Service

2.5 Digital Gift Cards. Motivosity partners with Tango Card to provide digital gift cards as part of the rewards component of the Service. By enabling the digital rewards in the Service, Subscriber authorizes an Admin or Admins who will be authorized to set up and manage reward funding options for the company. Deposits made by Subscriber are used to fund digital gift card purchases made by Users. The deposits may be made in one of the following ways:

2.5.1. **ACH Push Transfer.** In this case, the Subscriber transmits funds for digital rewards via ACH directly to Motivosity. Banking information will be provided on request.

2.5.2. **ACH Pull Transfer.** In this case, the authorized Admin enters the appropriate bank routing and account numbers into the Service interface and defines the rules (if any) that control how ACH Transfers will happen. Motivosity does not store banking information, but rather a bank authorization token provided by the ACH service.

2.5.3. **Credit Card Deposit.** In this case, the authorized Admin registers a credit card for funding the digital rewards. This card registration interface is part of the Service. A convenience fee of 3.5% will be added to deposits made by credit card. Motivosity does not store credit card information, but rather a card authorization token provided by the card processing service.

3. TERMS OF SERVICE

3.1 **Ownership.** The Subscriber expressly acknowledges that Motivosity is the sole and exclusive owner of all intellectual and industrial property rights in and to the Service, all related supporting software, and all registered and/or unregistered copyright, trademark, trade name, patent and design rights relating thereto.

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- 3.2 **Subscriber Must Have Internet Access.** In order to use the Service, Subscriber must have or must obtain access to the World Wide Web, either directly or through devices that access Web-based content. Subscriber must also provide all equipment necessary to make such (and maintain such) connection to the World Wide Web.
- 3.3 **Accuracy of Subscriber's Registration Information.** Subscriber agrees to provide accurate, current and complete information ("Registration Data") about Subscriber in gaining access to the Service. Subscriber acknowledges and agrees that if Subscriber provides information that is intentionally inaccurate, not current or incomplete in a material way, or Motivosity has reasonable grounds to believe that such information is untrue, inaccurate, not current or incomplete in a material way, Motivosity has the right to suspend or terminate Subscriber's account either (i) without notice, if Motivosity believes the Subscriber poses a threat of fraud or a data security threat or (ii) as provided in this Agreement but only after first providing Subscriber with written notice of such alleged information failure and provides Subscriber with no less than ten (10) days to cure such information
- 3.4 **Passwords, Access, And Notification.** Subscriber will be responsible for the confidentiality and use of Subscriber's (including its employees') passwords and user names. Motivosity will maintain and keep confidential and not disclose to any third party or person any of Subscriber or User' s passwords and user names.
- 3.5 **Product Updates.** Motivosity is a platform that is being actively developed. Updates, enhancements, and upgrades are usually deployed during a maintenance window that is either Friday night between 10pm and 12:00am (midnight) MST or Saturday night between 10pm and 12:00am (midnight). Motivosity has no obligation to notify Subscriber of upgrades, fixes, or enhancements as they happen. Motivosity will broadcast information about feature changes, additions, and enhancements to its customer base periodically. Motivosity may change the Service or features of the Service, to Subscribers or to Users generally, or to create or change usage limits for the

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Service. However, Motivosity will not remove material functionality of the services without thirty (30) days advanced written notice to Subscriber.

3.6 Data Management. Motivosity's policies and platform are designed to protect customer data from loss or interception. The application platform is hosted on Amazon AWS. Motivosity uses the tools available through AWS to provide redundancy, scalability, and security including multiple database copies made daily, use of a web application firewall, use of load balancing and data routing rules for secure access to data only by the application itself. Subscriber understands that the technical processing and transmission of Subscriber's electronic communications is fundamentally necessary to Subscriber's use of the Service. Subscriber agrees that Motivosity is not responsible for any electronic communications and/or Subscriber data which are lost, altered, intercepted or stored without authorization during the transmission or storage of any data whatsoever across networks not owned and/or operated by Motivosity unless due to gross negligence or willful misconduct of Motivosity.

3.7 Subscriber Content.

3.7.1. Some areas of the Service allow Subscriber to post content such as data and other content or information (any such materials a Subscriber submits, posts, displays, or otherwise makes available on the Service "Subscriber Content"). Subscriber retains ownership of Subscriber Content.

3.7.2. In connection with Subscriber Content, Subscriber affirms, represents and warrants that the Subscriber Content and Motivosity's use thereof as contemplated by this Agreement and the Service will not violate any law or infringe any rights of any third party, including but not limited to any intellectual property rights and privacy rights. Motivosity takes no responsibility and assumes no liability for any Subscriber Content that Subscriber or any other Subscriber, User or third party posts or sends over the Service. Subscriber shall be solely responsible for its Subscriber Content. If Subscriber is deemed to be abusive or outside of normal application usage, Motivosity shall notify Subscriber of such and request a remedy. If Subscriber fails to address the request within the requested timeframe, Motivosity retains the right, in its sole discretion, to delete or remove any Subscriber Content with or without notice.

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3.8 Proprietary Rights.

3.8.1. Subscriber acknowledges and agrees that the Service and any necessary software used in connection with the Service contain proprietary and confidential information of Motivosity that is protected by applicable intellectual property and other laws.

3.8.2. Motivosity retains all right, title and interest in its data, information and intellectual property rights, and nothing in this Agreement is intended to transfer or diminish such rights. The parties further acknowledge and agree that as between the parties, Motivosity owns all right, title, and interest in the Service and the Motivosity Technology and underlying software and proprietary and intellectual property rights therein. The use by Subscriber of any of these rights is authorized only for the Service and upon expiration or termination of this Agreement for any reason such authorization will cease.

3.9 **Service Rules.** Subscriber agrees not to engage in any of the following prohibited activities: (i) copying, distributing, or disclosing any part of the Service in any medium, including without limitation by any automated or non-automated "scraping"; (ii) using any automated system, including without limitation "robots," "spiders," "offline readers," etc., to access the Service in a manner that sends more request messages to Motivosity servers than a human can reasonably produce in the same period of time by using a conventional on-line web; (iii) transmitting spam, chain letters, or other unsolicited email; (iv) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Service; (v) taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure; (vi) attempting to intentionally upload invalid data, viruses, worms, or other software agents through the Service; (vii) collecting or harvesting any personally identifiable information, including account names, from the Service; (viii) using the Service for any commercial solicitation purposes; (ix) impersonating another person or otherwise misrepresenting Subscriber' s affiliation with a person or entity, conducting fraud, hiding or attempting to hide Subscriber' s identity; (x) interfering with the proper working of the Service; (xi) accessing any content on the Service through any



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technology or means other than those provided or authorized by the Service; or (xii) bypassing the measures Motivosity uses to prevent or restrict access to the Service, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Service or the content therein.

- 3.10 **Violations.** If, in Motivosity's sole and reasonable determination, Subscriber violates any material provision of this Agreement, Motivosity may permanently or temporarily terminate or suspend Subscriber access to the Service upon notice without liability. Motivosity will attempt to notify Subscriber of any such violation and to allow time for a remedy unless the violation poses a threat either to Motivosity or the data integrity of its Subscribers. Upon termination for any reason, Subscriber continues to be bound by this Agreement.

4. USER GRANTS

- 4.1 Subject to timely payment of fees, Motivosity grants to Subscriber and its Users a non-exclusive, non-transferable right and User to use and access the software for the administration and fulfillment of the Service in strict compliance with the terms and conditions of this Agreement solely for Subscriber's internal business purposes and in compliance with applicable law. Subscriber is responsible for all activities conducted by its Participants and for its Participants' compliance with this Agreement. Subscriber shall not: (i) resell, sublicense, lease, time-share or otherwise make the Service available to any third party other than its Participants, (ii) attempt to gain unauthorized access to, or disrupt the integrity or performance of, Service, (iii) modify, copy or create derivative works based on the Service, (iv) reverse engineer the Service, (v) access the Service for purposes of building a competitive product or service or copying its features or user interface, (vi) frame or mirror any content forming part of the Service other than on the Motivosity web site.

5. PUBLICITY RIGHTS

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5.1 Subscriber grants Motivosity the right to include the Subscriber as a customer in Motivosity's promotional material. Subscriber can opt to have their name excluded from such use by Motivosity except as agreed to in writing on a case-by-case basis by providing a sufficiently detailed email request regarding the same to sales@motivosity.com. The subject line in such email should be entitled "Non-use of Subscriber Name."

6. SERVICE LEVELS

6.1 **Uptime.** Motivosity warrants that it shall maintain application uptime of no less than 99.9% of the time during each calendar quarter, excluding Motivosity web site downtime for regularly scheduled maintenance (see Product Updates) and internet unavailability and downtime of the Amazon AWS North Virginia facilities. Should Motivosity fail to achieve 99.9% uptime in each of two consecutive calendar quarters ("Service Level Failure"), Subscriber may elect to terminate this Agreement per Section 1 of this Agreement. The Subscriber acknowledges that the Motivosity website may become temporarily unavailable from time to time in order to update and/or conduct routine maintenance relating to the same in accordance with section 3.6. Motivosity will provide as much written notice as possible to the Subscriber should Motivosity become aware that the Service will become temporarily unavailable.

6.2 **Defects.** Motivosity will use all commercially reasonable efforts to correct all application defects as a matter of top priority and to roll those out to customers at least as frequently as the weekly maintenance window described in section 3.6.

7. CONFIDENTIALITY

7.1 Except as expressly and unambiguously permitted hereunder, each party shall hold in confidence and not use or disclose any materials or information disclosed by the other party that are marked as confidential or proprietary, or if disclosed verbally, reduced to writing and marked confidential within thirty (30) days after the date of disclosure ("Confidential Information").

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Confidential Information will also include the Service and documentation and any new product or service information. Subscriber Confidential information includes Subscriber's Users and respective User names and passwords. Each party shall treat the other party's Confidential Information with at least the same degree of care it uses to prevent unauthorized disclosure or use of its own Confidential Information, but in no event less than reasonable care. Confidential Information will not include any materials or information that the recipient can prove is now, or later becomes, through no act or failure to act on the part of the receiving party, generally known or available to the public; (ii) is known by the receiving party at the time of disclosure as evidenced by its records; (iii) is furnished to the receiving party by a third party, as a matter of right and without restriction on disclosure; (iv) is independently developed by the receiving party without any breach of this Agreement; (v) is the subject of a written permission to disclose provided by the disclosing party; (vi) is disclosed in response to a valid order of a court or other governmental body or any political subdivision thereof in the jurisdiction in which the confidential information is required to be disclosed; provided, however, that the receiving party shall first have given notice to the disclosing party and shall, at disclosing party's cost and expense, cooperate with disclosing party's efforts, if any, to obtain a protective order requiring that the Confidential Information be limited or if so disclosed be used only for which the order was issued; or (vii) is otherwise necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary. Access to the Confidential Information is limited to employees and agents of the receiving party who have a legitimate "need to know" the information for their performance of this Agreement, who have been advised of the confidential nature thereof and who have agreed in writing, as a condition of employment, engagement or otherwise, to protect the Confidential Information with terms no less than are imposed by this Agreement. Notwithstanding the above, Motivosity may use aggregate, non-specific or identifiable Subscriber and/or User information to measure general Service usage patterns and characteristics of its user base, and may include such

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aggregate information about its audience in promotional materials or reports to third parties. This aggregate information will not reference names, phone numbers, email addresses, or other personally identifiable information, and it is not traceable to a specific recipient or user email address. Motivosity may assign its rights in this Agreement to any third party as it determines in its absolute discretion.

7.2 Motivosity' s privacy policy is set forth as indicated on the website at <http://www.motivosity.com/legal/privacy.html>. Motivosity reserves the right to change the policy and terms from time to time and post such changes at the above site locations. The parties agree that they will comply with all applicable privacy and data protection laws and regulations. Subscriber will not give any data to Motivosity containing personal information unless the owner of the data has specifically authorized Subscriber to do so. Any personal information that Subscriber provides in connection with this Agreement will be used and protected according to Motivosity' s privacy policy. Subscriber hereby consents to Motivosity' s transfer of limited data which describes award issuance to a third party service provider solely for the purposes of fulfilling its obligations to provide Services hereunder.

8. LIMITATIONS ON LIABILITY

8.1 IN NO EVENT WILL EITHER PARTY' S AGGREGATE LIABILITY TO THE OTHER UNDER ANY CLAIMS ARISING OUT OF THIS AGREEMENT EXCEED THE FEES PAID BY SUBSCRIBER TO MOTIVOSITY DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE INITIAL EVENT RESULTING IN SUCH CLAIMS. NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS OR FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION, EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE CUMULATIVE FOR ALL CLAIMS HOWSOEVER ARISING UNDER ALL AGREEMENTS, AND SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF THE REMEDIES PROVIDED IN THIS AGREEMENT SHALL FAIL OF THEIR ESSENTIAL PURPOSE.

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9. INDEMNIFICATION

9.1 Motivosity (the "Indemnifying Party") will defend, indemnify and hold harmless the Subscriber (the "Indemnified Party"), and the respective directors, officers, employees and agents of the Indemnified Party, from and against any and all third party claims and any costs, losses, damages, judgments and expenses (including reasonable attorneys' fees) which are awarded by a court of final jurisdiction and which are arising out of the Indemnifying Party' s infringement of a third party' s intellectual property rights. The obligations to defend and provide indemnification under this section are subject to the following conditions: (i) the party claiming indemnification shall promptly notify the Indemnifying Party having the duty of indemnification in writing of any indemnifiable claim or action for which indemnification is sought (provided that any failure to so notify shall not limit the indemnifying Party' s indemnification obligation except if and to the extent such failure materially prejudiced the Indemnifying Party' s ability to defend against any claim, suit or other proceeding), (ii) the Indemnifying Party shall, at its option, have sole control of the defence of any such claim or action and all negotiations for any settlement or compromise, provided that the party seeking indemnification shall have the right to provide for its own, separate defence at its own cost and expense. The Indemnifying Party will not, except with the prior written consent of the Indemnified Party, consent to the entry of any judgement or enter into any settlement which does not include, as an unconditional term thereof, the giving by the claimant or plaintiff to the Indemnified Party of a release from all liability in respect thereof. The parties agree to cooperate in good faith in the defence or settlement of any such demand, claim or suit. If use of the Service is permanently enjoined as the result of an infringement claim, Indemnifying Party will, in its sole discretion and expense, procure for Subscriber the right to continue using such Service, replace such Service with non-infringing product, modify such Service so that it is no longer infringing, or, if each of the foregoing is commercially unreasonable or unduly burdensome, Indemnifying Party shall refund to Indemnified Party the pro-rated remainder of fees paid by Subscriber. THE FOREGOING STATES THE

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PARTIES SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO CLAIMS OF INFRINGEMENT OF THIRD PARTY PROPRIETARY RIGHTS OF ANY KIND.

10. REPRESENTATIONS & WARRANTIES

10.1 Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Motivosity represents and warrants that it will use commercially reasonable efforts to provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and substantially in accordance with the online Motivosity help documentation under normal use and circumstances. Subscriber represents and warrants that Subscriber has not provided any false information to gain access to the Service and that billing information is correct.

11. DISCLAIMER OF WARRANTIES - MOTIVOSITY AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT THEREIN OR GENERATED THEREWITH. MOTIVOSITY AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET SUBSCRIBER'S REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY SUBSCRIBER THROUGH THE SERVICE WILL MEET SUBSCRIBER'S REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED EXCEPT AS PROVIDED IN THIS AGREEMENT, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, THE SERVICE AND ALL CONTENT IS PROVIDED TO



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SUBSCRIBER STRICTLY ON AN "AS IS" BASIS; ALL OTHER CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED BY MOTIVOSITY AND ITS LICENSORS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

12. GENERAL PROVISIONS

12.1 **Notice.** Any notice required to be given hereunder shall be deemed to have been properly given if (a) delivered personally, (b) sent by prepaid courier service or (c) transmitted by facsimile or electronic mail as follows:

Attention: Scott Johnson, CEO

Email: scott@motivosity.com

Address: 51 West University Parkway, Orem Ut 84058

Attention: Nancy Malecker

Email: nmalecker@rideuta.com

Address: 669 W. 200 S. Salt Lake City, UT 84101

12.2 If delivered personally or sent via prepaid courier service, shall be deemed to have been received on the date of such personal or courier delivery or (ii) if delivered via electronic mail transmission, shall be deemed to have been received on the actual date of such transmission as evidenced by written receipt of transmission obtained by the sender of such transmission. Either party may change its address for notice at any time, by giving notice to the other party pursuant to the provisions of this Agreement.

12.3 The parties agree that any obligation to pay any fees due and unpaid prior to termination shall survive the termination of this Agreement until fully performed.

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- 12.4 Notwithstanding anything to the contrary, Sections 7, 8, 9, 11 and 12 shall survive termination of this Agreement for any reason.
- 12.5 The failure of either party to require the performance of any term or condition of this Agreement, or the waiver by either party of any breach of this Agreement, shall not prevent a subsequent enforcement of any such term or any other term nor shall it be deemed a waiver of any subsequent breach.
- 12.6 Either party may be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from causes beyond the reasonable control of such party (including, without limitation, any events such as an Act of God, war, strike, supplier inventory shortage, flood, embargo, revolution or similar circumstances beyond the reasonable control of such party) and provided that such party shall be required to act diligently following the completion of such delay.
- 12.7 This Agreement is governed by the laws of Utah, USA and the parties irrevocably and unconditionally submit to the jurisdiction of the courts of The State of Utah, USA. This Agreement constitutes the entire agreement between the parties with regard to its subject matter, supersedes all prior or contemporaneous agreements, commitments, representations, writings, and discussions between the parties, whether oral or written, shall apply in lieu of the terms or conditions in any Subscriber purchase order or other order documentation (all such terms or conditions shall be null and void), and there are no other agreements, representations, warranties, or commitments which may be relied upon by either party. Neither party shall be liable hereunder by reason of failure or delay in the performance of its obligations hereunder (except for the non-payment of money) on account of strikes, shortages, riots, insurrection, war, acts of terrorism, fires, flood, storm, explosions, earthquakes, acts of God, governmental action, labor conditions, or any other cause which is beyond the reasonable control of the party. If a court of competent jurisdiction finds any provision hereof invalid or unenforceable, that provision will either be amended to achieve as nearly as possible the intent of the parties, or if amendment is not possible the

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offending provision shall be deemed struck, and the remainder of this Agreement will remain in full force and effect. The captions and headings in this Agreement are for convenience only and shall not affect the construction and interpretation of any provision of this Agreement. This Agreement may be executed by an original or electronic signature from a duly authorized person of the respective parties and be in two or counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

- 12.8 No modification to the Agreement shall be effective unless it is in writing and signed by each party.

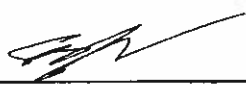


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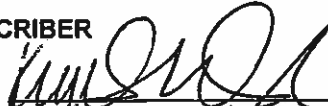
12.9 **IN WITNESS WHEREOF** the parties hereto have caused this Agreement to be executed as of the date first written above.


Signature Page

MOTIVOSITY, INC.

By: 
Name: Scott Johnson
Title: CEO
Date: 2/15/18

SUBSCRIBER

By: 
Name: Kim S. Wilbur
Title: Chief People Officer
Date: 2-9-18

By: 
Name: DIRECTOR OF TOTAL REWARD
Title: NANCY MULFORD
Date: 2-8-18

Approved as to Form:



UTA Legal Counsel