

## MASTER SERVICE AGREEMENT

This Master Service Agreement (“Agreement”) by and between GlobalSCAPE, Inc., a Delaware limited liability company with offices located at 4500 Lockhill-Selma Road Suite 150, San Antonio, TX 78249 USA (“Globalscape”) and the individual or type of Person intending to download, install or otherwise use the Software (“Subscriber”), sets forth the standard terms applicable to the service(s) purchased by subscriber and incorporates by reference the terms and conditions set forth in any addendum applicable to the actual service(s) procured (“addendum”). This agreement is effective as of the date indicated below (“Effective date”). Notwithstanding any different or additional terms Subscriber may reference or provide, Globalscape offer or acceptance (as applicable) to enter into an agreement with Subscriber with respect to the Subscription Services contemplated hereby, and Subscriber’s access to and use of the Service, are expressly limited to this Agreement and the applicable addenda(s) and is conditioned on Subscriber’s assent hereto. Globalscape and Subscriber are each a Party and may be referred to collectively as the Parties.

### 1. Definitions

- 1.1 “Affiliate”** means an entity controlling, controlled by or under common control with Globalscape or Subscriber, where the root word “control” means (i) owning fifty percent or more of an entity’s voting securities, partnership interests, membership interests or the like; (ii) having the right to appoint fifty percent (50%) or more of an entity’s Board of Directors or similar governing body; or (iii) having the right to fifty percent or more of the profits of an entity or fifty percent or more of the assets of an entity upon dissolution.
- 1.2 “Confidential Information”** means all non-public, confidential or proprietary information, in whatever form or medium, disclosed before, on or after the Effective Date, by one Party to the other Party or its Affiliates, or to any of such Party’s or its Affiliates’ employees officers, directors, partners, members, shareholders, agents, attorneys, accountants, contractors or advisors, and shall include, but not be limited to, the Services rendered by Globalscape to Subscriber, the Software licensed by Globalscape to Subscriber, information relating to a Party’s business concepts, non-public or personal information about customers, merchandising methods, ideas, processes, formulas, data programs, know-how, improvements, discoveries, business plans, financial information and compilations, developments, designs, inventions, techniques, marketing plans, strategies, forecasts, potential new product information, budgets, technology, projections, pricing strategies, costs, customer and supplier information, consumer personally identifiable information and all other information defined as a “trade secret” under the laws of the applicable jurisdictions. Confidential Information does not include any information that the receiving Party can establish: (i) was known to the receiving Party prior to receiving the same from the disclosing Party, free of any restrictions and in connection with this Agreement; (ii) is independently developed by the receiving Party without reference to the other Party’s Confidential Information; (iii) is acquired by the receiving Party from another source without restriction as to use or disclosure; or (iv) is or becomes part of the public domain through no fault or action of the receiving Party.
- 1.3 “Content”** means any data or document owned or licensed by Subscriber that is loaded into a Subscription Service by Subscriber.
- 1.4 “Documentation”** means Globalscape’s then-current online user guides, as updated from time to time, and as may be made accessible from within the “Help” feature of the Service.
- 1.5 “Effective Date”** for this Agreement is the date set forth in a signature page to this Agreement, and the Effective Date for each Service Order means the earlier of the date on the applicable Service Order; or the date Subscriber downloads, installs or uses the Software or Subscriber Services.
- 1.6 “Invoice”** means any statement of charges issued by Globalscape for fees.
- 1.7 “Maintenance Services”** means the support and maintenance services provide by Globalscape to Customer in accordance with the applicable maintenance policies and/or addendum attached.
- 1.8 “Person”** means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.
- 1.9 “Personal Information”** means any information relating to an identified or identifiable natural person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. Personal Information is Confidential Information.
- 1.10 “Professional Service”** means implementation or integration services; training services; programming or coding services; data conversion services; consulting, or other customized services, provided by Globalscape at the request of the Subscriber, and does not include Software, Maintenance or Subscription Services.
- 1.11 “Seats”** means individuals with a unique user identification that can utilize or be managed by the Software, including but not limited, to those individuals that are included in profile data store and designated by Subscriber as either “active” or “inactive”.

- 1.12 **“Service Order”** means the applicable Quote or statement of work issued by Globalscape for the Services, which includes term specific pricing and subject to the terms and conditions set forth in this Agreement and which is signed by a duly authorized representative of Subscriber.
- 1.13 **“Service(s)”** means, collectively, Software, Subscription Services, Maintenance Services and Professional Services provided by Globalscape. The Services provided will be licensed more specifically as set forth in a Service Order and the applicable Addenda.
- 1.14 **“Software”** means any software provided by Globalscape for use in conjunction with the Services, including all updates, add-ons, and enhancements.
- 1.15 **“Documentation”** means any tutorials, technical publications, and materials supplied with the Service(s), which include system requirements for implementation and operation of the Software or Subscription Service(s).
- 1.16 **“Subscription Period”** if applicable, means the annual time period for the grant to the Subscriber of a subscription license to the Software as indicated on an Invoice.
- 1.17 **“Third-Party Software”**, if applicable, means software products not developed by Globalscape and/or its subsidiaries that Globalscape may distribute or make available to Subscriber specifically for purposes related to the Services, Software and this Agreement. All Third-Party Software shall be governed strictly and solely by such third-party’s (i) clickwrap agreement, which requires Subscriber to “Accept” and/or “Agree” before utilizing and/or installing such software; (ii) the terms and conditions referenced via a universal resource locator (URL) indicated on the applicable quotation; or (iii) terms and conditions contained within a text file (e.g. .txt), which accompanies the Third-Party Software.
- 1.18 **“Subscription Duration”** is defined in the applicable Service Order, and starts on the Subscription Start Date.
- 1.19 **“Subscription Service(s)”** is defined as a software as a service application that is licensed for use under this Agreement.
- 1.20 **“Subscription Start Date”** is defined in the applicable Service Order or date of first use of applicable Service, whichever comes first.
- 1.21 **“Quote”** means the ordering document or statement specifying the details of the Services to be provided by Globalscape and purchased by Customer, which may include, without limitation, applicable fees, number of authorized users, the volume of use or data permitted, the Subscription Duration, any Service(s) to be performed by Globalscape.

## 2. Services.

- 2.1 Agreement to Comply with Terms. Subscriber and Globalscape hereby agree to comply with the terms and conditions of this Agreement, the applicable third party infrastructure terms at [Microsoft Customer Agreement](#), and each Addendum applicable to the Service(s) being procured. The terms and conditions of each such applicable Addendum, Invoice and Service Order are hereby incorporated into this Agreement by this reference.
- 2.2 Professional Services. If set forth in a Quote, Globalscape shall provide Professional Services for Subscriber pursuant to the terms of Globalscape’s Service Order.

## 3. Ownership. Grant of Rights

- 3.1 No Intellectual Property Assignment. Globalscape owns all right, title and interest in and to all versions of the Service(s) and all data related to the Service, and the development, creation, and delivery thereof, including, without limitation, any patents, copyrights, service marks, trademarks, trade secrets, and other intellectual property rights therein, and nothing in this Agreement shall be deemed to constitute a transfer or assignment of any such rights. Globalscape shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate in the Service any suggestions, enhancement requests, recommendations or other feedback provided by Subscriber relating to the Service (“Feedback”). In no event shall feedback be deemed to be Subscriber Confidential Information.
- 3.2 Software and Subscription Services. Subject to the terms and provisions of this Agreement, including Customer’s payment obligations, Globalscape hereby grants to Customer, and Customer hereby accepts, a limited non-exclusive, non-transferable, non-assignable, and worldwide license for the Subscription Duration to access and use the Services in third party cloud platform or infrastructure chosen by Globalscape and in object code/executable form for internal business purposes in the quantities set forth in the applicable Service Order, along with the applicable Documentation. The Service will be deemed accepted upon delivery of the access information. Subscriber’s use of the Services is subject to Globalscape’s then current privacy policy.
- 3.3 Restrictions. Subscriber specifically agrees to limit the use of the Service(s), Documentation, and Third-Party Software (if any) to those specifically granted in this Agreement. Subscriber must strictly comply with the terms and conditions of this Agreement including, without limitation, the following: (a) Subscriber may use

the Service for Subscriber's own internal business purposes and shall not outsource, sublicense, resell, lease, transfer or otherwise allow use of the Service for the benefit of any third party; and (b) Subscriber shall not (i) create localized or derivative works based on the Service, modify or port Service, or cause or permit others to; (ii) modify, reverse engineer, translate, disassemble, attempt to derive the source code or decompile the Service, or cause or permit others to; (iii) access the Service in order to build a competitive product or service; (iv) remove any of Globalscape's or its vendors', copyright notices and proprietary legends; (v) attempt to circumvent, disable or defeat the limitations on Subscriber's use of the Service which are encoded into the Service and/or Third-Party Software's key; (vi) use the Service and/or Third-Party Software (a) to infringe on the intellectual property rights of Globalscape or any third party, or any rights of publicity or privacy; (b) to violate any law, statute, ordinance or regulation (including but not limited to the laws and regulations governing export/import control, unfair competition, anti-discrimination and/or false advertising); (c) to propagate any virus, worms, Trojan horses or other programming routine intended to damage any system or data; (d) in any application that may involve risks of death, personal injury, severe property damage or environmental damage, or in any life support applications, devices or systems; and/or (e) such that the total number of Authorized Users or Authorized Devices in excess of the total Seats or other license metric allocated to Customer as reflected in the applicable Service Order or Invoice; (vi) file copyright or patent applications that include the Service and/or Third-Party Software or any portion thereof; (vii) use the Third-Party Software within any other applications or products other than with the Service; and/or (viii) make any Customer copies of the Service and/or Third Party Software except with the prior written approval of Globalscape and for nonproductive backup purpose only. Subscriber may not disclose results of any Services or program benchmark tests without Globalscape's prior written consent; or license, sell, rent, lease, transfer, assign, distribute, share, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the Services, Globalscape Documentation or materials available, to any third party other than, as expressly permitted under the terms of the Agreement. Without limiting any of the above, Subscriber may not combine the Services with any other services or software to create a commercially available solution. Except as expressly provided herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; and Subscriber agree to make every reasonable effort to prevent unauthorized third parties from accessing or using

- 3.4** Authorized Users. The rights granted to Subscriber under the Agreement are also conditioned on the following: the rights of any Authorized User permitted to use the Services cannot be shared or used by more than one individual (unless such permission is reassigned in its entirety to another authorized user, in which case the prior authorized user shall no longer have any right to access or use the Services). For server or equipment-based licenses, the license may not be transferred to another server or piece of equipment.
- 3.5** Administration of Services. Subscriber shall be solely responsible for the acts and omissions of Subscriber administrator users and any other user who accesses the Services with Subscriber account credentials. Globalscape shall not be liable for any loss of data or functionality caused directly or indirectly by the administrator Users. Globalscape may modify the Services with or without notice to Subscriber. Subscribers are responsible for assessing the suitability of each Service for Subscriber's intended use. By using the Services, Subscriber accepts responsibility for use of the Services, and acknowledge that they meet Globalscape requirements and enable Globalscape's compliance with applicable laws.
- 3.6** Third-Party Software. Third Party Software that may be appropriate or necessary for use with the Services or Software may be specified in the Documentation or on other portals or websites as applicable. For Services that allow access to third party services or links to those Services, such third-party services or third-party sites are subject to those third-party website terms.
- 3.7** Subscriber's Content for Subscription Services. Subscriber at all times retains full right, title and interest to its Confidential Information and as applicable to Services, Content. Subscriber represents and warrants that, to its actual or constructive knowledge, the use or transmission of the Content does not violate any applicable laws. Globalscape strongly recommends that Subscriber maintain appropriate backup copies of the Content.
- 3.8** License to Content. Globalscape does not, directly or indirectly, have the ability to view the Content; however in order to provide the Services, certain rights to the Content are required. To that end, Subscriber hereby grants Globalscape a non-exclusive, non-transferable (subject to Section 11.5 (Assignment)), royalty-free, right to process and display Content during the Term, solely to the extent necessary to provide the Services hereunder.
- 3.9** Personal Information. In providing the Services hereunder, Subscriber may disclose Personal Information to Globalscape. If applicable, Globalscape shall process all Personal Information in accordance with the Data Processing Addendum attached as Exhibit A to the applicable Service Order.

**3.10 Future Features and Functionality.** Subscriber agrees that any purchases under this Agreement are not contingent on the delivery of any future feature or functionality or dependent on any oral or written public or private comments made by Globalscape regarding future features or functionality. Globalscape may release improvements and other features and functionality in its discretion. Some features and functionality may be available only with certain versions of the Service(s).

**4. Subscriber Responsibilities.**

**4.1 Export Control.** Subscriber acknowledges that the Software and/or Services are subject to export control laws in the United States, the United Kingdom (UK) and elsewhere. Subscriber shall comply with all applicable export laws, obtain all applicable export licenses and will not export or re-export any part of the Software and Services to any country in violation of such restrictions.

**4.2 Anti-Corruption Laws.** Subscriber represents and warrants that it has not taken, and will not take, any action that would cause the other Party, and its subsidiaries or affiliates to violate any anti-corruption law, including but not limited to the United States Foreign Corrupt Practices Act, the UK Bribery Act, and all other applicable anti-corruption laws.

**4.3 Audit; Excess Users.** Subscriber will maintain records reasonably required to verify its compliance with this Agreement. Without limitation to the foregoing, Subscriber will purchase sufficient licenses for the number of Seats or other license metric it will need at all times. On Globalscape's written request, not more frequently than annually, Globalscape may audit Subscriber's use of the Software or Services. Any such audit shall be conducted during Subscriber's normal business hours and in such a manner as to avoid unreasonable interference with Subscriber's business operations. If an audit reveals that Subscriber has underpaid fees to Globalscape, Subscriber shall be invoiced for such underpaid fees.

**4.4** Subscriber acknowledges that the Services are a "Commercial Item", as that term is defined at 48 C.F.R. § 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. § 12.212 and 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. §§ 12.212, 227.7202-1 through 227,7202-4, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end-users (a) only as Commercial Items and (b) with only those rights as are granted to all other end-users pursuant to the terms and conditions in this Agreement.

**4.5 Installation and/or Use.** Upon payment of the fees, Globalscape shall deliver a key to make the current version of the Service(s) available to Subscriber. The Services shall be deemed delivered once it is made available to Subscriber and the license to the Services shall commence upon such delivery.

**5. Payment of Fees; Suspension.**

**5.1 Fees.** This Section 5 applies only if the Subscription Service is purchased directly from Globalscape. For clarity, Section 5.1 does not apply to Subscription Services purchased through an authorized reseller of Globalscape. During the term of this Agreement, Subscriber shall pay Globalscape the fees set forth in the applicable Service Order. Fees for the initial Subscription Duration of a valid Service Order shall be invoiced upon execution of such Service Order. Subsequent fees shall be invoiced prior to the start of the following annual period. All undisputed amounts payable to Globalscape shall be due net thirty (30) days from date of invoice. Fees paid are noncancellable and nonrefundable, except as otherwise expressly stated in this Agreement. If Subscriber in good faith disputes all or a portion of an Invoice, then Subscriber shall inform Globalscape within fifteen (15) days following Subscriber's receipt of the applicable invoice. Following receipt of Subscriber's written dispute, the Parties shall work together, in good faith and acting reasonably, to resolve said dispute. Promptly following resolution of such dispute, Subscriber shall pay any amounts determined to be owing as a result of the dispute's resolution. Notwithstanding the foregoing, Subscriber shall be responsible for promptly paying that portion of the Invoice not in dispute. Non-payment or late payment of undisputed fees is a material breach of this Agreement. If past due more than thirty (30) days and notified of past due status, Subscriber shall pay interest on the overdue balance at the rate of 1.5% per month or the maximum permitted by law, whichever is less, plus all expenses of collection. All taxes and other governmental charges (except for income taxes), if any, imposed on Subscriber payments hereunder shall be deemed to be in addition to the fees charged, and borne solely by Subscriber. In the event of a conflict in terms between this Section 5.1 and an applicable Service Order, the applicable terms of such Service Order shall prevail.

**5.2 Suspension.** Globalscape may immediately suspend your password, account, and access to or use of the Services: (a) if you fail to pay Globalscape as required under the Agreement and do not cure within ten (10) days of delivery of notice, (b) if you violate any provision of Section 3.2 (Software and Subscription Services), Section 3.3 (Restrictions) or Section 10 (Confidentiality) (c) Globalscape reasonably concludes that Subscriber's use of the Services is causing immediate and ongoing harm to Globalscape or others. If

Globalscape must suspend delivery of the Services, Globalscape shall notify Subscriber of the suspension and the parties shall diligently attempt to resolve the issue. Globalscape shall not be liable to Subscriber or to any third party for any liabilities, claims or expenses arising from or relating to any suspension of the Services in accordance with this Section. Without limiting any of Globalscape's other rights, Globalscape may terminate the Services hereunder if any of the foregoing is not cured within thirty (30) days after Globalscape's initial notice thereof. Any suspension by Globalscape of the Services under this paragraph shall not excuse Subscriber from your obligation to make payment(s) under the Agreement.

**5.3** Taxes. Subscriber shall be liable for payment of, and all fees are exclusive of, all local, state, and federal sales, use and excise or other similar taxes (including withholding taxes) and custom duties that are levied upon and related to the performance of obligations and exercise of rights under this Agreement. Globalscape may be required to collect and remit such taxes from Subscriber, unless Subscriber provides Globalscape with a valid tax exemption certificate. Globalscape will Invoice Subscriber for all such taxes based on the Software and/or Services provided. In no event will either Party be liable for any taxes levied against the other Party's net income.

## **6. Term and Termination**

**6.1** Term. This Agreement commences on the Effective Date and shall continue until the expiration of all Service Orders under this Agreement, unless earlier terminated as described below.

**6.2** Term and Termination of the Agreement. This Agreement may be terminated for convenience by either Party upon no less than ninety (90) days' prior written notice to the other, except that the Agreement shall remain in effect past such termination for the remaining term of this Agreement for any Service Order already in effect at the time of the notice.

**6.3** Term of a Service Order. The initial term of a Service Order shall start on its Subscription Start Date as indicated in such Service Order, and ends on the last day of its Subscription Duration. A Service Order shall automatically renew for subsequent terms equal to the Subscription Duration unless either Party notifies the other in writing of its intent not to renew at least sixty (60) days prior to the expiration of the then current term. Within the sixty (60) day period prior to the expiration of the current Subscription Duration, Globalscape shall send Subscriber an Invoice for the next Subscription Duration. Subscriber's payment in response to an Invoice prior to the expiration date of the then-current Subscription Renewal will extend the Services until the new expiration date indicated on the Invoice. If Subscriber fails to pay the Subscription Fees prior to the expiration date of the then-current Subscription renewal, Globalscape may condition any subsequent reinstatement on payment of an additional fee determined in Globalscape's sole discretion. If only one or more Service Orders are terminated but the Agreement and other Service Orders remain in effect, the foregoing shall only apply with respect to the Service Order(s) being terminated. Termination shall not relieve Subscriber's obligation to pay all undisputed charges accrued before the effective date of termination.

**6.4** Termination for Breach/Insolvency. Either Party may immediately terminate this Agreement and all Service Orders for material breach of this Agreement by the other Party if such breach is not cured within thirty (30) days after written notice thereof. Either Party may immediately terminate a Service Order for material breach by the other Party of the specific terms of such Service Order if such breach is not cured within thirty (30) days after written notice thereof. Either Party can terminate this Agreement immediately and without notice if a Party enters into compulsory or voluntary liquidation or is deemed unable to pay its debts as they fall due or convene a meeting of or enter into any composition with creditors or have an administrative receiver, receiver manager, or administrator appointed over all or some of the undertaking or assets or anything analogous to the events described occurs in any jurisdiction. Globalscape may terminate immediately if Subscriber has not paid Fees prior to start of Order Form.

**6.5** Consequences of Termination. Immediately upon termination of this Agreement or a particular Service Order(s), (a) the licenses granted to either Party shall immediately terminate; (b) upon written request, each Party shall destroy or return to the other Party any and all Confidential Information received from the other Party; and (c) Subscriber shall cease to use the Service and Globalscape shall cease hosting the Service for access by Subscriber. On termination or expiration of this Agreement for any reason, Subscriber shall make no further use of the Software and/or Services and shall either return to Globalscape or destroy originals and all copies of the Software and Software Documentation. Subscriber shall supply a written affidavit executed by an officer of Subscriber to Globalscape certifying that it no longer possesses any embodiments of the Software or Software Documentation.

## **7. Limited Warranties.**

**7.1** Subscription Services. Globalscape represents and warrants that it will perform the Service in a good and workmanlike manner in accordance with applicable industry standards. Subscriber's sole and exclusive remedy and Globalscape's entire liability for any breach of this Section 7.1 shall be as follows: Globalscape

will have thirty (30) days after written notice to deliver a correction that resolves the nonconformance of the Service with this Section 7.1 or shall refund to the Subscriber any prepaid Service fees paid under this Agreement in a prorated amount based on the remaining days in the Subscription Duration, and all remaining obligations under this Agreement shall be terminated.

**7.2** Disclaimer. EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS SECTION 7.2, GLOBALSCAPE DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES THAT THE FUNCTIONS PERFORMED BY THE SERVICE WILL MEET SUBSCRIBER'S REQUIREMENTS, THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFECTS IN THE SERVICE WILL BE CORRECTED. GLOBALSCAPE CANNOT AND DOES NOT REPRESENT OR WARRANT THAT THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THEREFORE, SUBSCRIBER SHOULD USE INDUSTRY-RECOGNIZED SOFTWARE TO DETECT AND DISINFECT VIRUSES FROM ANY UPLOAD AND DOWNLOAD TO AND FROM THE SERVICE. EXCEPT AS EXPRESSLY PROVIDED TO THE CONTRARY IN A WRITING BY GLOBALSCAPE, THE SERVICE IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. GLOBALSCAPE DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. GLOBALSCAPE DOES NOT REPRESENT OR WARRANT THAT THE SERVICE IS ACCURATE, COMPLETE, RELIABLE, CURRENT OR WILL BE UNINTERRUPTED OR ERROR-FREE.

## **8. Indemnification**

**8.1** Globalscape Indemnity. Globalscape shall defend Subscriber, officers and directors, employees and agents against any third party claims that the use of the Service as contemplated hereunder infringes any U.S. copyrights, patents or other intellectual property right of a third party, and Globalscape shall pay any losses, damages, costs, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) finally awarded by a court to such third party or otherwise agreed to in settlement of such claim by Globalscape.

**8.2** Subscriber Indemnity. Subscriber will defend Globalscape, its Affiliates, service providers and licensors, and their respective directors, officers, employees and agents, from and against any third party claims arising out of or related to any Subscriber Content posted, stored or otherwise transmitted on or through the (a) Service, including any claims that such content violates the intellectual property, privacy or other rights of, or has otherwise harmed, a third party, and for (b) Subscriber's unauthorized use of Services. Subscriber shall pay any losses, damages, costs, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) finally awarded by a court to such third party or otherwise agreed to in settlement of such claim by Subscriber.

**8.3** Procedure. If the Service(s) becomes, or in Globalscape's opinion is likely to become, the subject of an infringement or misappropriation claim, Globalscape may, at its option and expense, either (i) procure for Subscriber the right to continue using the Service(s); (ii) replace or modify the Service(s) so that it becomes non-infringing, or (iii) terminate Subscriber's right to use the Service(s) and give Subscriber a refund or credit of the amounts actually paid by Subscriber to Globalscape for the Service(s) less a reasonable allowance for the period of time Subscriber has used the Service(s). Globalscape will have no obligation with respect to any infringement or misappropriation claim based upon (1) any use of the Service(s) not in accordance with the Agreement or for purposes not intended by Globalscape; (2) any use of the Service(s) in combination with other products, equipment, software, or data not supplied by Globalscape; (3) any use of any release of the Service(s) other than the most current release made available to Subscriber; or (4) any modification of the Service(s) made by any Person other than Globalscape. Section 8.1 and 8.3 states Globalscape's entire liability and Subscriber's sole and exclusive remedy for infringement and misappropriation claims and actions.

**9. LIMITATION OF LIABILITY.** IN NO EVENT WILL EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE AGREEMENT, INCLUDING USE OF OR INABILITY TO USE THE SERVICE, OR ANY MATERIALS CONTAINED IN OR ACCESSED THROUGH THE SERVICE, INCLUDING WITHOUT LIMITATION ANY DAMAGES CAUSED BY OR RESULTING FROM RELIANCE BY SUBSCRIBER ON ANY INFORMATION OBTAINED FROM GLOBALSCAPE, OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR EMAIL, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO GLOBALSCAPE'S RECORDS, PROGRAMS OR SERVICE,

OR INCLUDING PROBLEMS INHERENT IN THE USE OF THE INTERNET, MOBILE AND PERSONAL COMPUTING DEVICES, TRANSMISSION OF ELECTRONIC COMMUNICATIONS OVER THE INTERNET OR OTHER NETWORKS, AND THIRD PARTY HOSTING SERVICE PROVIDERS. IN NO EVENT SHALL GLOBALSCAPE'S LIABILITY TO SUBSCRIBER AS A RESULT OF ANY CLAIM ARISING UNDER THIS AGREEMENT, REGARDLESS OF WHETHER SUCH CLAIM IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS PAID BY SUBSCRIBER IN THE TWELVE (12) MONTHS PRIOR TO THE OCCURRENCE OF THE ACT OR OMISSION GIVING RISE TO SUCH CLAIM.

**10. Confidentiality.**

**10.1** Each Party reserves any and all right, title and interest that it may have in or to any Confidential Information that it may disclose to the other Party under this Agreement. The receiving Party will protect Confidential Information of the disclosing Party against any unauthorized use or disclosure to the same extent that the receiving Party protects its own Confidential Information of a similar nature against unauthorized use or disclosure, but in no event less than a reasonable standard of care; provided that the Confidential Information of the disclosing Party is conspicuously marked or otherwise identified as confidential or proprietary upon receipt by the receiving Party or the receiving Party otherwise knows or has reason to know that the same is Confidential Information of the disclosing Party. The receiving party will use any Confidential Information of the disclosing party solely for the purposes for which it is provided by the disclosing Party. This paragraph will not be interpreted or construed to prohibit any use or disclosure of Confidential Information to the extent: (a) necessary or appropriate in connection with the receiving Party's performance of its obligations or exercise of its rights under this Agreement or any other agreement between the Parties; or (b) required to be disclosed by applicable law (e.g., pursuant to applicable securities laws or legal process), provided that the if not prohibited from doing so, the receiving Party uses reasonable efforts to give the disclosing Party reasonable advance notice thereof (e.g., so as to afford the disclosing Party an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information from any unauthorized use or disclosure). Globalscape and Subscriber agree that upon the request of the disclosing Party, the receiving Party will (a) promptly return to the disclosing Party or destroy all materials furnished by the disclosing Party containing Confidential Information, together with all copies and summaries of Confidential Information in the possession or under the control of the receiving Party, and provide written certification that all such Confidential Information has been returned to the disclosing Party, or (b) promptly destroy all materials furnished by the disclosing Party containing Confidential Information, together with all copies and summaries of Confidential Information in the possession or under the control of the receiving Party, and provide written certification that all such Confidential Information has been destroyed by the receiving Party, except copies stored for standard back up and retention or for legal purposes.

**10.2** Globalscape and Subscriber acknowledge and agree that the remedies available at law for any breach of this Section will, by their nature, be inadequate. Accordingly, each Party may obtain injunctive relief or other equitable relief to restrain a breach or threatened breach of this Agreement or to specifically enforce this Agreement, without proving that any monetary damages have been sustained.

**11. General Provisions.**

**11.1** The Parties are independent contractors and nothing in this Agreement shall be deemed to create the relationship of partners, joint ventures, employer-employee, master-servant, or franchisor-franchisee between the Parties.

**11.2** Neither Party is, or will hold itself out to be, an agent of the other Party. Neither Party is authorized to enter into any contractual commitment on behalf of the other Party.

**11.3** This Agreement, together with each Addendum, Service Orders, and Invoice, contains the entire agreement of the Parties and supersedes any prior or present understanding or communications regarding its subject matter, and may only be amended in a writing signed by an authorized representative of each Party. In the event of a conflict between the terms in a Service Order and the Agreement, the terms contained in the Service Order shall control. Neither Party shall be deemed the drafter of this Agreement. No modification of this Agreement shall be effective unless in writing and signed by both Parties. All additional and conflicting terms and conditions presented with or in any communication, including but not limited to Subscriber's purchase orders ("P.O."), except with respect to price, quantity and location specified in a P.O., are hereby rejected and shall be deemed null and void.

**11.4** In the event any provision of this Agreement is held by a court of law or other governmental agency to be void or unenforceable, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions shall remain in full force and effect.

- 11.5** Subscriber may not assign or otherwise transfer any of its rights or obligations hereunder, by operation of law or otherwise, and any assignment or transfer is null and void. Notwithstanding the foregoing, Globalscape may assign its rights and obligations hereunder to an Affiliate and/or to its successor pursuant to a merger, consolidation or sale of substantially all of its assets related to this Agreement. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.
- 11.6** Subscriber agrees that Globalscape may identify Subscriber by name as a customer of Globalscape on its website, in presentations, in customer lists, or other material that generally identify customers of Globalscape. Except for the foregoing, Globalscape shall not use Globalscape's name or logo without Subscriber's prior written permission. Subscriber shall not use Globalscape's name or logo without Globalscape's prior written permission.
- 11.7** This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. Neither Party shall be deemed to be in breach of this Agreement for any failure or delay in performance (other than fees due hereunder) caused by reasons beyond its reasonable control, including acts of God, war, terrorism, strikes, failure of suppliers, fires, floods, earthquakes or other force majeure events.
- 11.8** Any notice given under this Agreement shall be in writing and shall be effective (i) upon receipt if (a) email with read receipt or followed by U.S. mail service; or (b) sent via overnight mail by a nationally recognized express delivery service; when addressed to the address set forth above. A copy shall be sent to the address above or Contracts@Globalscape.com, Attn: Legal. Subscriber understands and acknowledges that notices concerning the Subscription Services may be sent electronically to the address specified as Subscriber's primary administrator Account.
- 11.9** The Parties' rights and obligations under this Section 11 (General Provisions), and under Sections 3.1 (No Intellectual Property Assignment), 3.3 (Restrictions), Section 7.2 (Disclaimer), Section 8 (Indemnification), 9 (Limitation of liability), 10 (Confidentiality) shall survive.
- 11.10** Governing Law and Jurisdiction. The Parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota without regard to conflict of laws principles. Any action or proceeding seeking to enforce any provisions of, or based on any right or claim arising out of this Agreement will be brought against Globalscape or Subscriber in Hennepin County Circuit Court of the State of Minnesota or, subject to applicable jurisdictional requirements in the United States District Court of the District of Minnesota, and Globalscape and Subscriber consent to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue.
- 11.11** Translations. If this Agreement is translated into any language other than English then the English language version shall prevail in the event of any conflicts in the documents. Translations are provided for convenience only.
- 11.12** Time Limit for Claims. Any claim must be brought by Subscriber within twelve (12) months of the date that the cause of action arose failing which we shall not be liable to Subscriber. All class action lawsuits, private attorney general actions or similar and trial by jury are excluded to the maximum extent permitted by law.
- 12.** Addendum/Addenda incorporated and/or attached herein by reference:
- 12.1** Exhibit A – Arcus Service Level Policy
- 12.2** Client Support Services: Maintenance and Support Guide



## Exhibit A – Arcus Service Level Policy

This Service Level Policy is for the production version of the SaaS Services to which You have subscribed (“EFT Arcus”) pursuant to the terms set forth Agreement in their entirety.

### 1. Definitions:

“ARM Data” means all data contained within the Auditing and Reporting Module database.

“Available” means the time that EFT Arcus is available during the applicable Qualifying Incident(s) Period (defined below) in its base functionality where Authorized Users may upload files and recipients who receive file availability notices may access files.

“Defect” means a reproducible source code bug which significantly degrades EFT Arcus’ performance or function.

“Excluded Downtime” means that the Minimum Uptime Percentage does not apply to any unavailability, suspension or termination of EFT Arcus due to the following: (i) limitations or inability to use EFT Arcus which are the result of failures or processing delays of services which are not provided by Globalscape, including but not limited to telecommunications and internet service providers; (ii) delays or failures involving hardware, software or power systems not within Globalscape’s possession or control, including Your systems;

(iii) limitations or inability to use EFT Arcus which are the result of any actions or inactions by You or any third party; (iv) distributed denial of service attacks, or processing delays in third party services accessed by EFT Arcus; (v) limitations or inability to use EFT Arcus caused by circumstances beyond Globalscape’s reasonable control, including without limitation, acts of God, strikes or other labor disturbances, war, whether declared or not, sabotage, and/or any other cause or causes, whether similar or dissimilar to those herein specified; and/or (vi) arising from Globalscape’s suspension and termination of Your right to use EFT Arcus in accordance with the Agreement or Other Agreement.

“Log Files” means all EFT log files, Your (Client) log files, Event Rule log files, AWE log files, ARM error log files and Windows Event Viewer Application log files.

“Month” or “month” means calendar month.

“Planned Maintenance Downtime” means the time for which EFT Arcus is not Available to You while Globalscape performs maintenance for security and system integrity purposes and provides EFT Arcus upgrades. Globalscape will use reasonable efforts to schedule such maintenance during the Standard Maintenance Window or Your non-core business hours as much as practicable.

“Standard Maintenance Window” means the period of time weekly from 2 p.m. to 5 p.m. Central Standard Time (“CST”) or 11 p.m. CST to 2 a.m. CST each Wednesday, based on Your choice, when EFT Arcus may not be Available due to the performance of Planned Maintenance Downtime. Globalscape will provide notice to You at least seventy-two (72) hours in advance of any such Planned Maintenance Downtime. Globalscape may shorten such Standard Maintenance Window.

“Uptime Percentage” means the proportion of the time, on a 24 hour per day, 7 day per week basis, during any applicable Qualifying Incident(s) Period, excluding the Standard Maintenance Window, other Planned Maintenance Downtime and Excluded Downtime, when the applicable production level services for EFT Arcus are Available. For this purpose, months are deemed to begin at 12:00 am U.S. CST on the first day of the month and end at 11:59pm U.S. CST on the last day of the month.

2. **Service Credit:** If the actual uptime percentage is less than the monthly uptime target of 99.95% in any given month during the term of the service contract, the customer may be eligible to request a “service credit.” You may”. A service credit will represent the right to extend the agreement at no cost to the You for the length of time indicated in Appendix 1. Service credits will be the Your sole remedy in the event Globalscape fails to meet the service level agreement or “SLA” described herein.

- a. **Service Credit Request Procedure:** In order to receive a service credit, You must submit a claim by creating a support case. To be eligible, the credit request must be received by Globalscape within 30 days of the date the incident occurred and should include:

1. The words “SLA Credit Request” in the case subject line.
2. The dates and times of each downtime incident the customer is claiming.
3. The impacted Globalscape customer cloud domain.
4. Any screenshots, logs or other documentation the You may have collected that corroborates the claimed outage (it is Your responsibility for redacting any confidential or sensitive information in these logs).
5. If the monthly uptime percentage of such request is confirmed by Globalscape to be less than the uptime target of 99.95%, You will be notified of the service credit determination within the month in which Your request is confirmed by us. Failure to provide the request and other information as required above will disqualify the customer from receiving a service credit.

3. Support by Authorized Reseller: If Your EFT Arcus Subscription was purchased via an Authorized Reseller of Globalscape, You hereby agree that:
  - a. The Authorized Reseller assumes responsibility for the issuance of invoices and usage reports and assumes collection of fees due. In such cases, support services pertaining to EFT Arcus under Your Agreement or Other Agreement will still be provided by Globalscape and as such, the guarantees with this SLA exist between You and Globalscape.
  - b. Any Ancillary Services provided either by such Authorized Reseller or any other third party is understood to be at Your discretion and shall exist between You and the applicable service provider. In such case, services should be outlined and defined between You and the applicable third-party service provider.

GLOBALSCAPE MAKES NO WARRANTIES AS IT PERTAINS TO AVAILABILITY AND PERFORMANCE OF EFT ARCUS WHEN SUCH SERVICES ARE PROVIDED BY A THIRD PARTY.

4. Retainment of ARM Data and Log Files: Globalscape will retain Customer's ARM Data and Log Files for either; (i) forty-five (45) days at no additional cost, or (ii) if purchased by Customer, for one-hundred and eighty (180) days at an additional fee.
5. Changes to Service Level Agreement. Globalscape may change this SLA, provided that any changes are reasonable and consistent with applicable law and industry norms. Any such changes made during the term of Your subscription to EFT Arcus will become effective upon the first to occur of: (i) renewal of Your EFT Arcus subscription, (ii) Your acceptance of a new/additional Quotation for Your account that incorporates the revised SLA, or (iii) thirty (30) days following Globalscape's notice to You describing the change. If the change materially and adversely affects You, You may terminate Your subscription to EFT Arcus by giving Globalscape written notice of termination on such grounds no later than thirty (30) days following the date the change became effective for Your account, and Globalscape will not enforce the change with respect to that account for thirty (30) days following the date of Your notice. If You terminate Your Agreement or Other Agreement because the change adversely affects it, Globalscape may decide not to enforce that change with respect to Your account and keep Your Agreement or Other Agreement in place for the remainder of Your subscription term.
6. Relationship to Agreement. This SLA is governed by and incorporates the Agreement and any Other Agreement executed by You and Globalscape.

## Appendix 1 – Uptime Percentage Table

Arcus SLA (Monthly Uptime Percentage)	Service Credit
Less than 99.95% but equal to or greater than 99.0%	Five (5) days
Less than 99.0% but equal to or greater than 95.0%	Fifteen (15) days
Less than 95.00%	Thirty (30) days