Schedule 7 – Hosting Agreement

This Hosting Agreement (the "Hosting Agreement") is a schedule to and is governed by the Master Agreement between CUSTOMER ("Customer") and iRely LLC ("Provider") ("Master Agreement"), and is effective on the Effective Date of the Master Agreement. Customer and Provider are hereafter referred to collectively as the "Parties" and sometimes individually as a "Party".

BACKGROUND

Provider is in the business of providing licensed access to its software applications for managing extended enterprise data and implementation services for such applications. Customer wishes to obtain access to such applications and services on a hosted processing basis, on the terms and conditions of this Hosting Agreement and the Master Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency thereof the Parties hereby acknowledge, the Parties hereby agree as follows, such agreement evidenced by the Parties' execution of the initial Ordering Document between the Parties and/or electronic assent provided in connection with such Ordering Document (or, as applicable, by means of any other commercially reasonable method of indicating the Parties' assent):

1)   **CERTAIN DEFINITIONS**

Capitalized terms not defined in this Hosting Agreement will have the meanings ascribed in the Master Agreement. For the purposes of this Hosting Agreement, the following terms have the following applicable meanings:

- "Affiliate" means, with respect to a specified Person, any Person which directly or indirectly controls, is controlled by, or is under common control with the specified Person as of the date of this Master Agreement, for as long as such relationship remains in effect; "control" and cognates means the direct or indirect beneficial ownership of a majority interest in the voting stock, or other ownership interests, of such Person, or the power to elect at least a majority of the directors or trustees of such Person, or majority control of such Person, or such other relationship that constitutes actual control.

- "Application" means, collectively, the Software and Documentation.

- "Documentation" means the materials created by or on behalf of Provider that describe or relate to the functional, operational, or performance capabilities of the Software, regardless of whether such materials are printed or electronic, including but not limited to: all operator's and user manuals, training materials, guides, commentary, technical, design or functional specifications, requirements documents, product descriptions, proposals, schedules, listings and other materials related to the Application.

- "Ordering Documents" means, collectively, **Schedule 1 - Proposal** to the Master Agreement and all subsequent proposal(s) and SOWs executed in writing by the Parties or

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submitted electronically through Provider's online ordering system and otherwise as provided by the Master Agreement.

- "Permitted Users" means Customer's account administrator or employees, representatives, consultants, contractors, agents and any third party to whom the Customer gives permission, in accordance with the Master Agreement, to access the Application via user identification and password combination or any method requiring authentication of an individual's identity.

- "Person" means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, association, cooperative, trust, estate, government, governmental agency, regulatory authority or other entity of any nature.

- "Software" means, collectively, the Provider software expressly set forth in the Ordering Documents, any software or other items developed pursuant to a Professional Services Agreement, and all Updates thereto.

- "Update" means any patch, bug fix, correction, update, upgrade, enhancement, minor release, or other modification by Provider to the Application.

2) DESCRIPTION OF APPLICATION AND SERVICES

- Hosting of the Application. Provider will use commercially reasonable efforts to provide services to permit Customer to receive hosted access to the Application ("Hosting Services"), in consideration of payment of all applicable fees specified in the Ordering Documents ("Hosting Fees") and subject to the restrictions and other terms set forth in Section 3 and all other terms and provisions of this Hosting Agreement and the Master Agreement.

- Accessing User Accounts. User IDs will be required to access and use the Application. Customer will access and use the Application only through the User IDs and only in accordance with the Hosting terms and other terms and conditions of this Hosting Agreement and in accordance with the terms of the Master Agreement. Customer will be responsible for issuing User IDs to such employees and Affiliates as it determines in its sole discretion, in accordance with this Hosting Agreement.

- Backup, Standard Maintenance and Support Services. Provider will use commercially reasonable efforts to provide data backup and disaster recovery services described in applicable Ordering Documents, subject to Customer's obligations in Section 4 and at the rates set forth in Section 5. Provider also will use commercially reasonable efforts to provide Maintenance Services for the Application. Fees and payment terms for the Maintenance Services will be as set forth in the applicable Ordering Documents.

- Hosting and Subcontractors. Provider may in its sole discretion engage third-parties to host the Application, deliver Maintenance Services under this Hosting Agreement, and perform any and all other services hereunder.

3) HOSTING RIGHTS AND RESTRICTIONS

- <u>Limited Rights to Hosted Application</u>. For each Application feature expressly described in an Ordering Document, and for which the applicable Hosting Fee is fully paid when due, Provider will grant to Customer a nonexclusive, non-transferrable, worldwide, limited, personal right, for the use and benefit only of Permitted Users, to access and use the Application described in the Ordering Documents, for the Hosting Period specified therein and only in the ordinary course of Customer's business operations and only for Customer's normal business purposes, provided that Customer will (a) access such Application features only through the User IDs; (b) load only Customer Data into the Application; (c) use the Application only for Customer's own internal business purposes; (d) access and use such Application features during the Hosting Period only in accordance with the Documentation; and (e) observe all of the other terms and conditions of the Ordering Documents and this Hosting Agreement. All rights not expressly granted to Customer herein are reserved to Provider and its licensors.

- <u>Type of Hosting</u>. Customer's rights to use the Application is limited to the number of Permitted Users specified in the applicable Ordering Documents.

- <u>Additional Hosting Restrictions</u>.

  - Customer will not access, or allow access to, the Application if Customer is in direct competition with Provider. Customer may not access the Application for purposes of monitoring its availability, performance, or functionality, or for any other benchmarking or competitive purposes.

  - Customer will not: (a) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (b) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or improper material, including without limitation material harmful to children or violative of third party privacy rights; (c) send or store material containing software viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents, or programs; (d) interfere with or disrupt the integrity or performance of the Application or the data contained therein; (e) attempt to gain unauthorized access to the Application or its related systems or networks; or (f) input any data or information into the Application that is credit card or debit card information, personal banking, financial account information, social security numbers, HIPAA-protected data, or personal confidential information concerning individuals.

  - Customer will not permit Permitted Users to share User IDs with each other or with third parties. Customer acknowledges and agrees that: (a) Provider will rely on the validity of any Permitted User ID, instruction or information that meets the Application's automated criteria or which is believed by Provider to be genuine; (b) Provider may assume a person entering a Permitted User ID and password is, in fact, that Permitted User; and (c) Provider may assume the latest email addresses and registration information for Permitted Users on file with Provider are accurate and current.

  - Customer is responsible for the compliance by all Permitted Users with this Hosting Agreement and for all use of Permitted User accounts and confidentiality of passwords. Customer will promptly notify Provider in the event that a Permitted User's password has been lost, stolen or otherwise compromised.

4) **ADDITIONAL CUSTOMER RESPONSIBILITIES**

- User IDs. Customer will select its Users in its sole discretion and will issue to each individual Permitted User a User ID to access the Application, subject to the limitations and obligations herein, provided that Customer will be responsible for all activity occurring under Customer's Permitted User accounts. Customer will: (a) notify Provider immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (b) report to Provider immediately and use reasonable efforts to stop immediately any unauthorized copying or distribution of Customer Data that is known or suspected by Customer or Permitted Users; and (c) not impersonate another Provider customer or provide false identity information to gain access to or use the Application.

- Data Preparation and Configuration. Customer will ensure that: (a) it maintains Customer Data in proper format as specified by the Documentation or, if applicable, a Statement of Work to the Master Agreement or a Provider Professional Services Agreement, and that Customer Data does not include personal identifying information); (b) Customer's personnel will be familiar with the use and operation of the Application; and (c) Customer will not introduce other software, data, or equipment having an adverse impact on the Application. Following any initial implementation assistance by Provider, Customer will load the Customer Data and configure the Application and its internal processes, as needed, to operate the Application in Customer's computing environment. Customer, not Provider, will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and right to use of all Customer Data, and Provider will not be responsible or liable for any deletion, correction, destruction, damage, loss, or failure to store any Customer Data that is caused by Customer, a Permitted User or any other Person, or the use or misuse of Permitted User IDs by a third party.

- Data Integrity and Backup. Customer is ultimately responsible for the integrity of Customer Data and communications maintained or transmitted by the Application and will be ultimately responsible for backing up Customer Data and other Customer IP, notwithstanding any backup or disaster recovery services provided by Provider. Customer has set no limit on the number of transmissions Customer may send or receive through the Application or the amount of storage space used, except as provided in the Ordering Documents, and Customer's volume of transmissions may affect its Hosting Fees.

5) **FEES AND PAYMENT**

- Hosting Fees and Payment. Customer will pay the Hosting Fees, in advance, for the rights to access and use the Application during the applicable Hosting Period and as set forth in the Ordering Documents. Hosting Fees will be invoiced annually before the corresponding Hosting Period, which dates may be specified in the Ordering Documents. Invoices will be due and payable within thirty (30) days after the invoice date, and in no event later than one (1) day before the start of the applicable Hosting Period. Any future Ordering Documents will be at Provider's then-published rates or as otherwise agreed by the Parties in the Ordering Documents. All payment obligations for Hosting Fees are non-cancelable and all amounts paid are nonrefundable.

- Data Storage and Backup Fees. The Hosting Fees include the amounts of online data storage and hourly data backups as set forth in the Ordering Documents. If the amount of

disk storage required exceeds these limits, Customer will be charged the then-current storage fees at the time the Hosting Fee is due. Provider will use commercially reasonable efforts to notify Customer when its usage approaches ninety percent (90%) of the allotted storage space; however, any failure by Provider to notify Customer will not affect Customer's responsibility for such additional storage charges. Any additional data storage will be at Provider's then applicable rates or as otherwise agreed in an Ordering Document.

- <u>Other Payment Terms</u>. Invoices and payments will be subject to **Schedule 5 – Invoicing and Payment** to the Master Agreement.

6) PROVIDER INTELLECTUAL PROPERTY INDEMNITY

Provider will defend and indemnify Customer against any third-party claim that the Application, as and when provided to Customer by Provider and when properly used for the purpose and in the manner specifically described in the Documentation and as authorized by this Hosting Agreement, does not infringe upon any United States patent issued as of the date of this Agreement or copyright, trade secret or other proprietary right of any Person. Provider will have no obligation under this <u>Section 6</u> unless Customer promptly gives written notice to Provider after any applicable infringement claim is initiated against Customer and allows Provider to have sole control of the defense or settlement of the claim. The remedies provided in this <u>Section 6</u> are Customer's sole and exclusive remedies for any infringement claims and related issues. If any applicable infringement claim is initiated, or in Provider's sole opinion is likely to be initiated, then Provider will have the option, at its expense, to modify, remove or replace all or the infringing part of the Application so that it is no longer infringing or procure for Customer the right to continue using the infringing part of the Application.

By clicking the "I agree" box in connection with the initial Ordering Document between you and Provider or, as applicable, by means of another commercially reasonable method of indicating your assent, you acknowledge that you are entering into a legally binding agreement with Provider, and that you have read, understood, and agreed to the terms of the Master Agreement and the terms of this Schedule.