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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**

13 GOLDEN HAMMER OPS, LLC, a California
14 Limited Liability Company d/b/a Golden Hammer
15 Services d/b/a Golden Hammer Hosting

16 Plaintiff(s),

17 vs.

18 JETNET, LLC, a New York Limited Liability
19 Company, DANIEL JASON STREUFERT, an
20 individual, and ADSBEXCHANGE.COM, LLC,
21 an Arizona Limited Liability Company

22 Defendants.

No. **23CHCV02662**

VERIFIED COMPLAINT

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Plaintiff Golden Hammer Ops, LLC (“Golden Hammer”), a collection of software,
3 systems, and network engineers, brings this action to protect its confidential information and trade
4 secrets primarily embedded in a software platform that it developed for the real-time ingestion,
5 processing, and visualization of flight-related data. Golden Hammer’s proprietary software is
6 threatened by Defendants Daniel Streufert and JETNET, LLC (“JETNET”) who conspired to copy
7 and transfer the software platform to JETNET, and who continue to misappropriate Golden
8 Hammer’s confidential information and trade secrets.

9 2. In January, Mr. Streufert, the sole owner of Defendant ADSBExchange.com, LLC
10 (“ADS-B Exchange”), sold his company’s business to JETNET. The backbone of that business is a
11 software platform which aggregates flight data to produce a real-time map of aircraft traffic.

12 3. But neither Mr. Streufert nor ADS-B Exchange had the right to sell or transfer that
13 platform, which Golden Hammer designed and developed pursuant to two agreements with ADS-B
14 Exchange: a Master Services Agreement for software development and information-technology
15 services (the “Services Agreement”) (Ex. A); and a second Master Services Agreement for hosting
16 of the software platform and the ADS-B Exchange website (the “Hosting Agreement”) (Ex. B).

17 4. The Services Agreement unambiguously states that Golden Hammer owns all the
18 rights to its work, and that ADS-B Exchange has only a limited license to use Golden Hammer’s
19 software. Ex. A § 7. It also explicitly prohibits ADS-B Exchange from assigning, transferring, or
20 sublicensing its rights without Golden Hammer’s prior written consent. *Id.* at § 12.

21 5. Mr. Streufert knew that he did not own the software platform or a license that he
22 could transfer or extend to JETNET. Just weeks before the transaction, he tried and failed to obtain
23 Golden Hammer’s consent. Nevertheless, Mr. Streufert went forward and sold the business.

24 6. JETNET immediately asserted ownership of the software platform. Mr. Streufert,
25 now a part of the JETNET team, demanded that Golden Hammer grant him and a JETNET engineer
26 access to Golden Hammer’s computers, computer systems, and computer networks in order to move
27 and transfer the software away from Golden Hammer’s servers. Golden Hammer did not provide
28 JETNET with permission. Nevertheless, Mr. Streufert went forward and transferred the software.

1 7. On or around January 31st, 2023, Mr. Streufert provided a JETNET engineer with
2 his credentials from ADS-B Exchange which permitted the engineer to access Golden Hammer's
3 computer network. Once logged in, the engineer installed scripts that attempted to brute force login
4 to protected services, and to establish a reverse SSH tunnel between Golden Hammer's network and
5 an unknown external server. Use of this tunnel disabled the ability for Golden Hammer to monitor
6 its network traffic, identify the type or content of transmissions being sent to and from the external
7 host, and to determine which commands the engineer executed on its computer systems. On
8 information and belief, Mr. Streufert and the JETNET engineer used this tunnel to conceal their
9 activity and exfiltrate Golden Hammer's confidential information and trade secrets without having
10 their actions logged or detected.

11 8. Golden Hammer terminated Mr. Streufert's access to its systems and networks as
12 soon as it discovered this tunnel, but Mr. Streufert remained undeterred, attempting to access
13 Golden Hammer's proprietary source code and, on information and belief, decrypt automated
14 backups of its software.

15 9. Meanwhile, JETNET's attorneys aggressively attempted to bully Golden Hammer
16 into providing them with access. Golden Hammer eventually retained counsel who informed
17 JETNET that it needed a license to access and use Golden Hammer's proprietary software. In late
18 March, JETNET's counsel agreed to provide Golden Hammer with a term sheet for acquisition of
19 Golden Hammer or a license to use its software.

20 10. A week later, however, on March 30th, JETNET abruptly ended negotiations and
21 notified Golden Hammer that it had already moved the software platform to a new host, and that it
22 would no longer require Golden Hammer's services. On information and belief, Mr. Streufert found
23 a copy of the software platform he could operate and transferred it to JETNET.

24 11. As of the date of this complaint, JETNET has not explained how they obtained the
25 platform currently running adsbexchange.com, which is an exact copy of software built by Golden
26 Hammer. Nor has it provided any justification for using Golden Hammer's confidential information
27 and trade secrets without permission. Instead, JETNET tersely denies that Golden Hammer has any
28 rights in the software platform and therefore claims it is not using any Golden Hammer intellectual

1 property.

2 12. The available public evidence, however, is clear. JETNET continues to use Golden
3 Hammer's software, which contains valuable features and solutions developed over years of work,
4 and which Golden Hammer can confirm it built using its private software code and credentials. On
5 information and belief, JETNET did not build the platform currently operating adsbexchange.com
6 by itself, nor could it have in less than three months.

7 13. JETNET continues to unjustly enrich itself and harm Golden Hammer by willfully
8 and maliciously using Golden Hammer's confidential information and trade secrets without
9 permission and without consequence.

10 14. Golden Hammer thus brings this action for preliminary and permanent injunctive
11 relief to stop JETNET's illegal conduct and to prevent further misuse of its confidential information
12 and trade secrets. Golden Hammer also seeks damages for ADS-B Exchange's breach of contract,
13 Defendants' misappropriation of trade secrets, and for the combined effort of Mr. Streufert and
14 JETNET to access Golden Hammer's computer systems and networks in violation of the California
15 Computer Data Access and Fraud Act.

16 **THE PARTIES AND JURISDICTION**

17 15. Plaintiff Golden Hammer Ops, LLC, is a California Limited Liability Company with
18 its principal place of business located at 24355 Creekside Road in Los Angeles County, California.
19 It sometimes does business as Golden Hammer Hosting and/or Golden Hammer Services.

20 16. Defendant Daniel Jason Streufert is an individual. On information and belief, Mr.
21 Streufert resides in Fountain Hills, Arizona. Mr. Streufert incorporated ADS-B Exchange in 2016
22 and remains its sole owner. This Court has jurisdiction over Mr. Streufert because, on information
23 and belief, he regularly conducts business in this state, and because his unlawful acts conducted
24 toward Golden Hammer predominantly occurred and caused harm in this State.

25 17. Defendant ADSBExchange.com, LLC is an Arizona Limited Liability Company. On
26 information and belief, its principal place of business is located at 15031 East Ridgeway Drive in
27 Fountain Hills, Arizona. This Court has jurisdiction over ADS-B Exchange because, on information
28 and belief, it regularly conducts business in this state, and because its unlawful acts conducted

1 toward Golden Hammer predominantly occurred and caused harm in this State. ADS-B Exchange
2 also consented to this jurisdiction in its Services and Hosting Agreements with Golden Hammer.

3 18. Defendant JETNET, LLC is a New York Limited Liability Company with its
4 principal place of business located at 101 First Street, 2nd Floor in Utica, New York. This Court has
5 jurisdiction over JETNET because, on information and belief, it regularly conducts business in this
6 state, and because its unlawful acts conducted toward Golden Hammer predominantly occurred and
7 caused harm in this State. On information and belief, JETNET also consented to this jurisdiction
8 when it assumed the responsibility of ADS-B Exchange under the Hosting Agreement with Golden
9 Hammer.

10 VENUE

11 19. Venue is proper in this County pursuant to California Code of Civil Procedure § 395
12 because Golden Hammer and ADS-B Exchange entered into the contracts at issue in this County,
13 Golden Hammer performed a substantial portion of its services under these contracts in this County,
14 and Defendants' wrongful acts complained of herein occurred in this County.

15 GENERAL ALLEGATIONS

16 **A. Golden Hammer's Software and Its Trade Secrets and Confidential Information**

17 20. Golden Hammer was founded in 2020 to provide software development and
18 information technology services. Its members include experts in networking, systems operation,
19 software development, and the hosting and scaling of complex computer applications.

20 **i. Golden Hammer Engineers Develop a Prototype Flight-Tracking Platform**

21 21. In May of 2020, a representative of ADS-B Exchange, Mr. James Stanford,
22 suggested that Mr. Gregory Rowlee, one of Golden Hammer's founders, contact Mr. Streufert to
23 offer his services regarding the ADS-B Exchange website and software platform.

24 22. The adsbexchange.com website allows users to track aircraft in real-time on a
25 visualized flight map. The data powering the site is provided by a community of worldwide
26 volunteers who purchase, configure, and host small computer devices known as "receivers." These
27 devices listen for signals transmitted by aircraft transponders, decode them, and transmit the
28 resulting information to servers which ingest, process, and extract the relevant data. These servers

1 then transmit the data to a user's computer where software renders and visualizes the flight map.

2 23. Mr. Rowlee became a member of this community in 2018 and soon began assisting
3 other members with technical issues configuring their receivers. He also volunteered his time to
4 help Mr. Stanford and Mr. Streufert with issues arising from ADS-B Exchange's software platform.
5 Prior to Mr. Rowlee's involvement, on information and belief, Mr. Streufert and Mr. Stanford were
6 the primary engineers and developers for the ADS-B Exchange software platform.

7 24. In 2019, Mr. Rowlee grew frustrated with the performance and reliability of ADS-B
8 Exchange's software platform, which he felt used inefficient and incorrectly configured software.
9 Mr. Rowlee also began to grow frustrated with ADS-B Exchange's lack of a development and
10 release process. The only way to improve the platform required convincing Mr. Stanford that a
11 change was necessary or beneficial. This process could both be slow and unnecessarily combative.

12 25. Privately, Mr. Rowlee began to develop a better flight-tracking platform utilizing his
13 expertise in scaling large, data-intensive applications. Specifically, Mr. Rowlee sought to move
14 away from the primary software used by ADS-B Exchange, and use newer, more robust open-
15 source software packages to decode and process aircraft-related data.

16 26. In late 2019, Mr. Rowlee recruited Mr. Matthias Wirth to join his efforts in
17 developing a new platform. Mr. Wirth is a German Software engineer with expertise in developing
18 open-source software packages related to the processing and visualization of flight-related data.
19 Like Mr. Rowlee, Mr. Wirth had also grown frustrated with ADS-B Exchange's software platform
20 and development process.

21 27. Between January and May in 2020, Mr. Wirth and Mr. Rowlee conceived and
22 developed a proof-of-concept software platform that could handle substantially more data than
23 ADS-B Exchange's platform without incurring significant increases in cost. In or around May of
24 2020, the two engineers provided Mr. Streufert with one or more demonstrations of this prototype.

25 28. A month later, Mr. Streufert hired Golden Hammer to adapt and develop this
26 prototype for use by ADS-B Exchange by signing the Services and Hosting Agreements. Mr. Wirth
27 also formally joined the Golden Hammer team in June of 2020.

28 **ii. Golden Hammer Scales the Platform Through Innovative Problem Solving**

1 29. In order for a flight tracking platform to be successful, the platform must process
2 flight data quickly and accurately while keeping operational and hosting costs low.

3 30. When Golden Hammer began work under the Services Agreement in June of 2020,
4 the ADS-B Exchange platform handled around fifty-five thousand messages per second. In a
5 January 2023 press release announcing its acquisition of ADS-B Exchange, JETNET noted that the
6 software platform was capable of “aggregating over 750,000 messages per second worldwide.”

7 31. In addition to increasing capacity, Golden Hammer also improved the quality of data
8 aggregated from the receivers by implementing a system of filters, validations, and other checks to
9 ensure that duplicate, erroneous, or malicious data would be excluded from processing. As a result,
10 the platform could process greater quantities of information while maintaining data accuracy.

11 32. Golden Hammer’s platform also proved to be reliable. During the three years Golden
12 Hammer developed and hosted the adsbexchange.com website and software platform, ADS-B
13 Exchange never once claimed that Golden Hammer breached its service level requirements under
14 the Hosting Agreement.

15 33. Golden Hammer accomplished these milestones by utilizing the software
16 development, infrastructure, and networking expertise of its engineers. It developed thoughtful and
17 unique solutions to problems that limited the site’s capacity, scalability, and ability to monetize its
18 data. Golden Hammer also developed sophisticated methods to protect the platform and its data
19 from misinformation, dedicated attacks, or network outages. Golden Hammer’s solutions to these
20 problems, as well as the countless changes to source code, configuration tweaks, and other
21 improvements and features it developed contain various proprietary and confidential trade secrets.

22 34. Golden Hammer’s trade secrets at issue in this case include, but are not limited to,
23 the following: system architecture and specifications; algorithms for grouping receivers and routing
24 data derived from Mode-S signals; algorithms for isolating and validating receiver data; methods for
25 filtering, deduplicating, processing, transforming, and exporting flight-related data; anti-bot and
26 anti-scraping security measures; proprietary methods for building, deploying, operating, and
27 administering the platform; and other configuration details and specifications.

28 35. These trade secrets have significant economic value from not being generally known

1 to the public or the flight-tracking industry. This information was developed by Golden Hammer
2 over a significant period through substantial cost and investment. If this information could be
3 learned at all, it would take a substantial amount of time to learn, and only at a substantial cost. This
4 information provides a flight-tracking website like adsbexchange.com with economic value and an
5 advantage over its competitors.

6 **iii. Golden Hammer Protects its Proprietary Information**

7 36. Given its substantial investment in developing strategies, methods, software code,
8 and configurations to host and scale complex software products, Golden Hammer takes significant
9 steps to protect its confidential information. For example, Golden Hammer makes its contractors
10 and customers sign agreements with stringent confidentiality provisions.

11 37. Golden Hammer takes reasonable measures to protect its source code. The code itself
12 is hosted on a server owned by Golden Hammer at its data center in Los Angeles. Golden Hammer
13 must explicitly grant access to a user identified by their email address. Someone who attempts to
14 login without an address on this whitelist will be denied access and the system will flag the attempt
15 in the system log. Furthermore, Golden Hammer’s permissions are granular—that is, users can only
16 access projects that Golden Hammer authorizes them to access. The software Golden Hammer uses
17 to run its server also logs important events such as sign-ins or attempts to access specific data.

18 38. Golden Hammer’s source code is used to build a series of applications contained in
19 pre-configured operating system images known as virtual machines. Since these images contain
20 Golden Hammer confidential information and trade secrets, Golden Hammer takes reasonable
21 measures to protect access to them as well. For example, other than encrypted backups, Golden
22 Hammer only hosted these images in two places. The first is on Golden Hammer’s servers located
23 in a Los Angeles data center. The second is a disaster recovery site that Golden Hammer agreed to
24 host on servers maintained by Mr. Streufert in Arizona in order to save on costs.

25 39. In both locations, Golden Hammer only permits users that are specifically authorized
26 to access these machines through its shell, or in other words, by logging into the machines remotely
27 using Golden Hammer’s virtual private network (“VPN”). Each user is provided their own specific
28 machine through which they access the network, sometimes known as a “jumpbox” or “bastion

1 host.” This enables Golden Hammer to restrict access to sensitive data on the machine level in
2 addition to access controls on the user and network levels. Use of a bastion host also provides an
3 audit trail, as a user’s activity on the server is recorded and logged.

4 40. Golden Hammer also limits physical access to the machines hosting its proprietary
5 information. Only one Golden Hammer engineer, Mr. Ryan Bonnell, is authorized to enter the Los
6 Angeles data center. For software and services that it hosts on external servers, Golden Hammer
7 requires each party to agree to maintain the confidentiality of its proprietary information. For
8 example, while hosting the disaster recovery site, Mr. Streufert agreed to protect Golden Hammer’s
9 confidential information in both the Services Agreement, *see* Ex. A § 8, and the Hosting
10 Agreement, *see* Ex. B § 12.2.

11 41. Golden Hammer maintains digital logs of user activity on the network and regularly
12 conducts assessments of its security procedures and protocols. If Golden Hammer detects that
13 someone has unauthorized access or is exceeding the scope of their intended access, it will promptly
14 suspend that user’s access and/or take the affected services offline.

15 42. Golden Hammer requires its customers to agree to these terms. For example, its
16 Service Work Order under the Hosting Agreement contains the following provision in Section 4(a):

17 Disabling the Virtual Server. If the Resources get infected, hacked, or are compromised in
18 any way, and if it is determined by the Provider that there is a potential threat to the
19 Provider's network or any of the Provider's other customers, the Provider can, in its sole
20 discretion, contact the Customer and disable the Customer's Resources until the Customer
21 can take the appropriate actions to resolve the issue or contact the Provider to resolve the
22 issue and the Customer shall compensate the Provider at the Provider's then-current rates for
such disablement. The Provider may disable the Services at anytime if the Provider
reasonably believes that the Customer has violated the Provider's then-current acceptable use
policy (which the Provider shall provide to the Customer promptly following a request
therefore).

23 Ex. B § at 13-14.

24 **B. Golden Hammer Owns its Work Product, which ADS-B Exchange Cannot Transfer**

25 43. The Services Agreement contains the following provision regarding the ownership of
26 work produced by Golden Hammer:

27 Intellectual Property. All intellectual property rights, including copyrights, patents, patent
28 disclosures and inventions (whether patentable or not), trademarks, service marks, trade
secrets, know-how and other confidential information, trade dress, trade names, logos,
corporate names and domain names, together with all of the goodwill associated therewith,

1 derivative works and all other rights (collectively, "Intellectual Property Rights") in and to
2 all documents, work product and other materials that are delivered to Customer under this
3 Agreement or prepared by or on behalf of the Service Provider in the course of performing
4 the Services, including any items identified as such in the Statement of Work (collectively,
5 the "Deliverables") except for any Confidential Information of Customer or customer
6 materials shall be owned by Service Provider. Service Provider hereby grants Customer a
7 license to use all Intellectual Property Rights in the Deliverables free of additional charge
8 and on a non-exclusive worldwdown- [sic] transferable, non-sublicenseable, fully paid-up,
9 royalty-free and perpetual basis to the extent necessary to enable Customer to make
10 reasonable use of the Deliverables and the Services.

11 Ex. A § 7.

12 44. The Services Agreement contains the following provision regarding assignment:

13 Assignment. Customer shall not assign, transfer, delegate or subcontract any of its rights or
14 delegate any of its obligations under this Agreement without the prior written consent of
15 Service Provider. Any purported assignment or delegation in violation of this Section 16
16 shall be null and void. No assignment or delegation shall relieve the Customer of any of its
17 obligations under this Agreement. Service Provider may assign any of its rights or delegate
18 any of its obligations to any affiliate or to any person acquiring all or substantially all of
19 service provider's assets without customer's consent.

20 Ex. A § 16.

21 45. Prior to signing the two agreements, Mr. Streufert asked Golden Hammer whether
22 ADS-B Exchange could have the same right to assign the Services Agreement should he sell all or
23 substantially all of ADS-B Exchange's assets. In a June 3, 2020, email to Mr. Rowlee, he noted in
24 reference to Section 16 that "as the customer, we would like a similar provision should we be
25 acquired. (not likely, but I've been burned by this in the past with M&A activity)." In the email, Mr.
26 Streufert also confirmed his understanding that the Hosting Agreement could be assigned as part of
27 a sale, but not the Services Agreement. Golden Hammer did not agree to Mr. Streufert's request.

28 46. The Services Agreement contains the following provision regarding the
confidentiality of information:

Confidentiality. From time to time during the Term of this Agreement, either Party (as the
"Disclosing Party") may disclose or make available to the other Party (as the "Receiving
Party"), non-public, proprietary, and confidential information of Disclosing Party that, if
disclosed in writing or other tangible form is clearly labeled as "confidential," or if disclosed
orally, is identified as confidential when disclosed and within 10 days thereafter, is
summarized in writing and confirmed as confidential ("Confidential Information");
provided, however, that Confidential Information does not include any information that: (a)
is or becomes generally available to the public other than as a result of Receiving Party's
breach of this Section 8; (b) is or becomes available to the Receiving Party on a non-
confidential basis from a third-party source, provided that such third party is not and was not
prohibited from disclosing such Confidential Information; (c) was in Receiving Party's
possession prior to Disclosing Party's disclosure hereunder; or (d) was or is independently

1 developed by Receiving Party without using any Confidential Information. The Receiving
2 Party shall: (x) protect and safeguard the confidentiality of the Disclosing Party's
3 Confidential Information with at least the same degree of care as the Receiving Party would
4 protect its own Confidential Information, but in no event with less than a commercially
5 reasonable degree of care; (y) not use the Disclosing Party's Confidential Information, or
6 permit it to be accessed or used, for any purpose other than to exercise its rights or perform
7 its obligations under this Agreement; and (z) not disclose any such Confidential Information
8 to any person or entity, except to the Receiving Party's Group who need to know the
9 Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its
10 rights or perform its obligations under this Agreement.

11 If the Receiving Party is required by applicable law or legal process to disclose any
12 Confidential Information, it shall, prior to making such disclosure, use commercially
13 reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party
14 the opportunity to seek, at Disclosing Party's sole cost and expense, a protective order or
15 other remedy. For purposes of this Section 7 only, Receiving Party's Group shall mean the
16 Receiving Party's affiliates and its or their employees, officers, directors, manager,
17 independent contractors and service providers.

18 Ex. A § 8.

19 47. The Hosting Agreement also contains a provision protecting Golden Hammer's
20 confidential information:

21 Provider Provided Information. Information provided by Provider to Customer while
22 performing services (including, without limitation, information regarding Provider's
23 operations, methods, or processes) is proprietary to Provider and confidential. Customer
24 shall not divulge such information and shall take all reasonable steps to ensure that each
25 member of the Customer Group will not divulge such information to any other Person.
26 Customer shall safeguard and protect all such information in its custody or control.
27 Customer's confidentiality obligation shall survive for two years following the termination
28 of this Agreement. This obligation of confidentiality shall not apply where (a) such
information is already known to Customer or its representatives or to others not bound by a
duty of confidentiality, (b) such information is or becomes publicly available through no
fault of Customer or its representatives, (c) the furnishing or use of such information is
required by, is necessary, or is appropriate in connection with legal (whether judicial,
administrative, or legislative) proceedings, or (d) such information is developed by
Customer independent of this Agreement or any Order. Before making a disclosure in a
legal proceeding, Customer shall notify Provider, in writing, of the relevant circumstances.

Ex. B § 12.2.

**C. ADS-B Exchange Breaches the Services Agreement and Agrees to Transfer Golden
Hammer's Software Platform and Trade Secrets Without Golden Hammer's Consent**

48. On or around November 10th, 2022, Mr. Streufert flew to Boston, Massachusetts to
meet with executives from JETNET and its private equity owners, Silversmith Capital Partners. On
information and belief, Mr. Streufert agreed during this visit to begin the process to sell the
company's business, including its software platform, to JETNET.

1 49. On November 29th, 2022, Mr. Streufert sent Mr. Rowlee an email containing a
2 proposal for Golden Hammer to continue working for Mr. Streufert after a sale to JETNET.

3 50. A month later, on December 27th, 2022, Mr. Rowlee sent Mr. Streufert a private
4 message on Discord containing Golden Hammer’s list of terms to provide its consent and continue
5 working for Mr. Streufert. The first item requested Mr. Streufert to be honest with Golden Hammer,
6 Mr. Stanford, and others regarding the sale, and to be transparent regarding the sale’s progress and
7 terms. Mr. Rowlee also requested a percentage of the sale price, and for Golden Hammer to be fully
8 compensated for its previously subsidized work.

9 51. Mr. Streufert did not acknowledge Mr. Rowlee’s message, and instead sent him an
10 email containing a proposed amendment to the parties’ agreements drafted by ADS-B Exchange’s
11 counsel on January 3rd, 2023. *See* Ex. C. The email offers Mr. Rowlee a “total bonus of \$150,000
12 to you (from me)” in return for his consent to “[a]llow assignment of the contract.” *Id.*

13 52. The proposed amendment contains the following section:

14 12. Master Services Agreement; Consent. Golden Hammer Services Inc. (“GH Services”),
15 an affiliate of GH, hereby consents to the assignment of that certain Master Services
16 Agreement entered into by and between GH Services, dated June 8, 2020, in connection
with any Qualified Transaction.

17 Ex. C, at 4. The term “Qualified Transaction” is defined in the amendment as “a transaction
18 whereby the Customer sells all or substantially all of its assets.” *Id.*, at 2. Golden Hammer did not
19 accept Mr. Streufert’s offer, nor did it sign the proposed Amendment.

20 53. On information and belief, JETNET hired the accounting firm KPMG to perform
21 diligence on ADS-B Exchange prior to completing the transaction. No one from KPMG or any
22 other accounting or consulting firm contacted Golden Hammer prior to the transaction.

23 54. On information and belief, JETNET hired one or more attorneys to conduct due
24 diligence prior to completing the transaction. No attorney representing JETNET contacted Golden
25 Hammer prior to the transaction.

26 55. Despite failing to obtain Golden Hammer’s consent, Mr. Streufert nevertheless sold
27 ADS-B Exchange’s business to JETNET. Upon information and belief, ADS-B Exchange sold all
28 or substantially all of its assets to JETNET, including its rights under the Services and Hosting

1 Agreements with Golden Hammer. On information and belief, JETNET agreed to assume ADS-B
2 Exchange's rights and obligations under these agreements.

3 56. While Golden Hammer was upset that Mr. Streufert sold the business without its
4 consent, its engineers nevertheless continued to provide services to ADS-B Exchange. For example,
5 a day after learning about the acquisition, Golden Hammer's engineers spent hours responding to a
6 service disruption caused by a failure in the Los Angeles data center.

7 **D. Mr. Streufert and JETNET Conspire to Misappropriate Golden Hammer's**
8 **Confidential Information and Trade Secrets**

9 57. Upon information and belief, JETNET conspired with Mr. Streufert to steal Golden
10 Hammer's confidential information, software, and trade secrets. Mr. Streufert and JETNET agreed
11 to demand that Golden Hammer provide JETNET with access to its computer systems and network,
12 and then, once having obtained that access, misappropriate Golden Hammer's confidential
13 information, software, and trade secrets.

14 58. After sale of the business, on January 29th, JETNET asserted it owned and had the
15 right to access the source code and servers containing Golden Hammer software and trade secrets.
16 First, on January 29th, 2023, Mr. Streufert requested that Mr. Rowlee provide Justin Hill, a JETNET
17 engineer, with credentials to access its system so that he could "LOOK" at the platform's
18 environment and assess how to migrate or "lift and load" the virtual machines to a new host. Mr.
19 Streufert further stated that "[h]e will be under orders to touch nothing and make no changes until
20 we asses *[sic]* the plan." On information and belief, Mr. Streufert instructed Mr. Hill to touch and
21 make changes to Golden Hammer's computers, computer systems, and/or computer networks.

22 59. Golden Hammer grew suspicious of Mr. Streufert's intentions. Accordingly, it did
23 not authorize Mr. Hill or JETNET to access its network or provide JETNET with its own
24 credentials. Nor did Golden Hammer consent to Mr. Hill using Mr. Streufert's credentials.

25 60. On or before January 31st, 2023, Mr. Streufert provided Mr. Hill with credentials to
26 access his bastion-host on Golden Hammer's network. Mr. Hill used these credentials to login to the
27 bastion-host and copy to it pre-written shell scripts along with a list of Golden Hammer servers,
28 including servers that were used to host data for customers unrelated to ADS-B Exchange. On

1 information and belief, Mr. Streufert provided Mr. Hill with the list of Golden Hammer servers.

2 61. One of these scripts included instructions to login and obtain configuration data as
3 well as identifying information for each server in the list. On information and belief, JETNET
4 sought this information in order to reverse engineer Golden Hammer's architecture, and to identify
5 servers containing Golden Hammer confidential information and trade secrets to exfiltrate.

6 62. Another shell script copied to Golden Hammer's server established a reverse SSH
7 tunnel originating from Golden Hammer's network to a server at an external domain that, on
8 information and belief, is managed by one of Mr. Hill's family members.

9 63. On February 1st, 2023, Golden Hammer detected suspicious activity on its network.
10 Someone using Mr. Streufert's credentials attempted to brute force login to servers containing
11 Golden Hammer confidential information and trade secrets. This individual also attempted to access
12 servers unrelated to the flight-tracking platform that were included on the list of Golden Hammer
13 machines. After an investigation, Golden Hammer determined this individual was Mr. Hill.

14 64. While investigating Mr. Streufert's bastion host, Golden Hammer discovered that
15 Mr. Hill had established the reverse SSH tunnel and was currently executing commands and
16 transferring data through it.

17 65. Golden Hammer then investigated the domain at the tunnel's endpoint, which
18 revealed that this domain hosted a file server that had been configured to accept traffic originating
19 from Golden Hammer's network, but not from the public. In other words, on information and belief,
20 Mr. Hill or someone on his behalf configured the domain's firewall and file server to specifically
21 accept traffic originating from Golden Hammer's network.

22 66. Given this activity, Golden Hammer believed that its network and services had been
23 compromised by a malicious actor. Use of a reverse SSH tunnel, for example, meant that Mr. Hill
24 could bypass Golden Hammer's logging protocols and conceal the commands he executed on
25 Golden Hammer's machines. Moreover, because an SSH tunnel encrypts its traffic, Golden
26 Hammer was unable to determine what information Mr. Hill was sending from Golden Hammer's
27 machines to this external domain. Considering these details, Golden Hammer believes that Mr. Hill
28 intended to conceal his activity and exfiltrate data from Golden Hammer. Upon information and

1 belief, Mr. Hill performed these actions on behalf of JETNET, and at the direction of Mr. Streufert.

2 67. Accordingly, Golden Hammer immediately terminated the network connection and
3 suspended Mr. Streufert's VPN access pursuant to Section 4(a) of the Service Work Order under the
4 Hosting Agreement. Suspension of Mr. Streufert's credentials did not affect operation of the
5 platform nor Golden Hammer's provision of hosting services under the Hosting Agreement.

6 68. On February 3rd, 2023, Mr. Streufert contacted Golden Hammer seeking restoration
7 of his VPN credentials and threatening legal action by JETNET if Golden Hammer did not reinstate
8 his access. In response, Golden Hammer explained that:

9 [I]t came to our attention that the access was being used by those with bad intent, whom
10 exposed our internal network to an unknown location (via an SSH tunnel) and attempted to
11 brute force user logins; so we shut off the access (not only because it is outside the MSA)
12 but to ensure that the customer experience was not interrupted because of those events.

12 Golden Hammer also inquired whether JETNET was interested in purchasing its software and
13 intellectual property rights instead of attempting to acquire them by unlawful means.

14 69. Mr. Streufert, on information and belief, sought other means to access Golden
15 Hammer's confidential information and trade secrets. For example, on February 10th, 2023, Mr.
16 Streufert logged into Golden Hammer's source code repository for the first time in nearly fifteen
17 months. On information and belief, he was attempting to copy and transfer Golden Hammer's
18 source code.

19 70. On or about February 15th, 2023, on information and belief, Mr. Hill and Mr.
20 Streufert contacted a third-party service provider whose software is used to encrypt the platform's
21 scheduled backups. On information and belief, some of these backups resided in a storage service
22 procured by Mr. Streufert, which he could access. In order to decrypt this information, however,
23 Mr. Streufert would need Golden Hammer's unique encryption key which he did not have. Upon
24 information and belief, Mr. Streufert and Mr. Hill contacted the third-party software provider to
25 seek their assistance in decrypting or bypassing the encryption on these backups.

26 71. Meanwhile, JETNET's attorneys began to assert rights to the software platform and
27 demanded Golden Hammer provide JETNET with unrestricted access to its network and its
28 encryption keys. On February 8th, 2023, counsel for JETNET sent an email including the following

1 paragraph:

2 Thanks for your prompt response. It is much appreciated. All we are asking for is for you
3 to restore VPN access and SSH keys to our environment, together with full administrative
4 access and access to backups, including access to HAProxy servers, configurations, and
5 encryption keys/passwords (including Veeam). These have been provided since the
6 beginning of the parties' relationship. We also believe these are squarely included in the
7 services under the parties' agreements.

8 During the parties' relationship, Golden Hammer never provided ADS-B Exchange with access to
9 its HAProxy servers and configurations, as they contain confidential algorithms and valuable trade
10 secrets. During the parties' relationship Golden Hammer also never provided ADS-B Exchange
11 with its unique encryption keys or passwords. On information and belief, JETNET sought access to
12 the HAProxy servers to copy and transfer Golden Hammer's confidential information and trade
13 secrets. On information and belief, JETNET sought Golden Hammer's encryption keys and
14 passwords to decrypt and/or access Golden Hammer's software containing its confidential
15 information and trade secrets.

16 72. Golden Hammer attempted to continue providing services under the Hosting
17 Agreement. It agreed to restore JETNET's access to certain services and perform tasks that
18 JETNET requested such as creating new API keys for its customers. It refused, however, to
19 reinstate Mr. Streufert's access until it could retain counsel and properly assert its rights.

20 73. On February 23rd, 2023, JETNET's Vice President of Corporate Development,
21 Joshua Baird asserted in an email to Golden Hammer that JETNET possessed the license set forth in
22 the Services Agreement. The email contains the following paragraph:

23 To further our discussions, our IP attorney has outlined the rights and responsibilities under
24 the license. I have included a few of those below:

- 25 - First, we own a perpetual license to the software that was developed under the service
26 agreement
- 27 - The license has been completely paid for
- 28 - The license requires that Golden Hammer allows us to operationalize the
software/platform, meaning that Golden Hammer is responsible for providing what is
necessary for us to run the software/platform

Mr. Baird's email did not explain how he or JETNET's "IP attorney" arrived at the conclusion that
JETNET owned or possessed this license.

74. In response to these assertions, Golden Hammer's counsel sent JETNET a letter on
March 3rd notifying them that Golden Hammer intended to terminate its agreements with ADS-B

1 Exchange unless JETNET obtained a license. *See* Ex. D. The letter also noted that should ADS-B
2 Exchange terminate the Services Agreement or let it expire, the license grant would expire as well.

3 75. On or around March 15th, 2023, counsel for JETNET conferred with Golden
4 Hammer’s counsel to attempt to reach an amicable resolution. JETNET agreed during that
5 conference to provide Golden Hammer with a term sheet for the parties to discuss. On March 23rd,
6 2023, JETNET’s counsel emailed Golden Hammer’s counsel and explained that JETNET was “still
7 working on the proposed term sheet.”

8 76. A week later, JETNET followed up. But instead of attaching a term sheet, Mr. Baird
9 attached an email drafted by its counsel at Dickinson Wright notifying Golden Hammer that
10 “ADSB Exchange (‘ADSBx’) migrated to a new hosting provider today.” It also included the
11 following paragraph in bold type:

12 For the avoidance of doubt, this e-mail constitutes formal notice of ADSBx’s intent not to
13 renew any contracts with Golden Hammer and/or a 30-day notice of termination, as
applicable, under the parties’ various contracts.

14 Ex. E, at 1.

15 77. The letter also includes this paragraph:

16 Finally, I wanted to briefly address your March 3, 2023 letter. As I relayed during our calls
17 following receipt of the letter, neither ADSBx nor any of its affiliates improperly accessed,
18 attempted to obtain, or obtained any proprietary data from Golden Hammer. ADSBx was
and remains in compliance with all of its contractual obligations to Golden Hammer.

19 *Id.* The letter contains no legal or factual basis for these claims.

20 78. On May 26th, 2023, Golden Hammer sent JETNET a detailed letter notifying it that
21 it had terminated the Services Agreement for material breach arising from ADS-B Exchange’s
22 assignment or transfer of the Services Agreement to JETNET, and its transfer of Golden Hammer’s
23 software and trade secrets to JETNET. *See* Ex. F. It also notified JETNET that it was using software
24 built by Golden Hammer without a license that had been unlawfully obtained by Mr. Streufert.

25 79. JETNET’s counsel sent its client’s final written correspondence to Golden Hammer
26 on June 16th, 2023. *See* Ex. G. The letter revealed for the first time, much to Golden Hammer’s
27 surprise, that JETNET’s counsel did not represent ADS-B Exchange, and that the surviving
28 corporate entity and Mr. Streufert would be represented separately. The letter also noted for the first

1 time that Mr. Streufert is, and has always been, ADS-B Exchange's sole owner, and that JETNET
2 did not acquire any rights to the software through a merger. *Id.* On information and belief, JETNET
3 acquired the ADS-B Exchange business through an asset purchase agreement or similar mechanism.
4 JETNET still refuses to disclose the method of acquisition to Golden Hammer, despite the
5 information's impact on the ownership and licensing of the software platform.

6 80. JETNET's letter also argued, for the first time, that Golden Hammer has no
7 intellectual property rights in its software, and that JETNET is not misappropriating any Golden
8 Hammer confidential information or trade secrets. *Id.* It also argues, curiously, that Golden Hammer
9 does not have the right to revoke the license in the Services Agreement. *Id.* The letter did not
10 provide an explanation for JETNET's interest in the license given that it could not have acquired it
11 without Golden Hammer's consent, which it did not obtain.

12 81. Golden Hammer provided JETNET with one last opportunity to cease using Golden
13 Hammer's confidential information and trade secrets and destroy all copies of them. On July 19th,
14 2023, Golden Hammer's counsel sent JETNET a letter describing with specificity the work product
15 Golden Hammer created pursuant to the Services Agreement and its value. It also described how
16 publicly available evidence can easily establish that JETNET is using valuable algorithms and
17 security protections that bear unique signatures or encodings known only to Golden Hammer.

18 82. But JETNET continues to flagrantly misappropriate Golden Hammer's confidential
19 information and trade secrets. Golden Hammer has no adequate remedy at law to fully protect it.
20 JETNET has demonstrated that it believes it can use Golden Hammer's confidential information,
21 software, and trade secrets without permission and without restriction. It is evident that JETNET
22 will continue to do so unless enjoined. Should Defendants' conduct continue, Golden Hammer will
23 be irreparably injured, and Defendants will be unjustly enriched from their unlawful conduct.

24 **FIRST CAUSE OF ACTION**

25 **Misappropriation of Trade Secrets under Civil Code § 3426 et seq**

26 **(Against All Defendants)**

27 83. Golden Hammer hereby incorporates the previous paragraphs of this Complaint by
28 reference as though fully set forth herein.

1 84. At all relevant times, Golden Hammer owned and was in possession of trade secrets
2 including those set forth in paragraph 34 above, its source code and documentation, and other
3 highly confidential information.

4 85. Golden Hammer's trade secrets derive independent economic value, both actual and
5 potential, from not being generally known to other persons, businesses, or the public, who could
6 obtain economic value from their disclosure or use.

7 86. As alleged in detail above, Golden Hammer goes to great lengths to maintain the
8 secrecy of its trade secrets.

9 87. ADS-B Exchange has misappropriated and/or threatened to misappropriate Golden
10 Hammer's trade secrets without Golden Hammer's consent in violation of California's Uniform
11 Trade Secrets Act, California Civil Code § 3426 *et seq.* On information and belief, ADS-B
12 Exchange, without authorization, acquired, copied, and transferred to JETNET Golden Hammer's
13 confidential information and trade secrets.

14 88. Upon information and belief, ADS-B Exchange may also have disclosed Golden
15 Hammer's trade secrets to individuals or corporations who were not authorized to view or use them.

16 89. Mr. Streufert has misappropriated and/or threatened to misappropriate Golden
17 Hammer's trade secrets without Golden Hammer's consent in violation of California's Uniform
18 Trade Secrets Act, California Civil Code § 3426 *et seq.* On information and belief, Mr. Streufert,
19 without authorization, acquired, copied, and transferred to JETNET Golden Hammer's confidential
20 information and trade secrets.

21 90. Upon information and belief, Mr. Streufert may also have disclosed Golden
22 Hammer's trade secrets to individuals or corporations who were not authorized to view or use them.

23 91. JETNET has misappropriated and/or threatened to misappropriate Golden Hammer's
24 trade secrets without Golden Hammer's consent in violation of California's Uniform Trade Secrets
25 Act, California Civil Code § 3426 *et seq.* On information and belief, JETNET, without
26 authorization, acquired, copied, and used Golden Hammer's confidential information and trade
27 secrets including software files and virtual machines built by Golden.

28 92. Upon information and belief, JETNET may also have disclosed Golden Hammer's

1 trade secrets to individuals or corporations who were not authorized to view or use them.

2 93. As a proximate result of Defendant's misappropriation, Golden Hammer has been
3 injured and faces further irreparable harm. Golden Hammer is threatened with losing its trade
4 secrets and confidential information, and the ability to sell or license its software to other flight-
5 tracking enterprises, causing damages in amounts which may be impossible to determine, unless
6 ADS-B Exchange and JETNET are enjoined and restrained by order of this Court.

7 94. ADS-B Exchange's misappropriation was willful and malicious. ADS-B Exchange
8 knew that Golden Hammer owned its flight-tracking software platform, that it kept its source code
9 and software secret, and that ADS-B Exchange could not transfer it without Golden Hammer's
10 consent. After failing to obtain that consent, on information and belief, ADS-B Exchange
11 nevertheless transferred Golden Hammer's confidential information and trade secrets to JETNET.

12 95. Mr. Streufert's misappropriation was willful and malicious. He knew that Golden
13 Hammer owned its flight-tracking software platform, that it kept its source code and software
14 secret, and that he could not transfer it without Golden Hammer's consent. After failing to obtain
15 that consent, on information and belief, Mr. Streufert nevertheless transferred Golden Hammer's
16 confidential information and trade secrets to JETNET.

17 96. JETNET's continuing misappropriation is willful and malicious. JETNET knows
18 that Golden Hammer owns its flight-tracking software platform, that it kept its source code and
19 software secret, and that JETNET could not transfer it without Golden Hammer's consent.
20 Furthermore, JETNET is aware that its unlawful use of Golden Hammer's confidential information
21 and trade secrets provides it with a competitive advantage over other flight-tracking platforms.
22 Nevertheless, it continues to use Golden Hammer's confidential information and trade secrets,
23 including on the adsbexchange.com website, unjustly enriching itself and harming Golden Hammer.

24 97. Golden Hammer is therefore entitled to an award of exemplary damages and
25 attorneys' fees and costs pursuant to California Civil Code §§ 3426.3(c); 3426.4.

26 **SECOND CAUSE OF ACTION**

27 **Breach of Contract**

28 **(Against Defendant ADS-B Exchange)**

1 98. Golden Hammer hereby incorporates the previous paragraphs of this Complaint by
2 reference as though fully set forth herein.

3 99. The Services Agreement is a valid and enforceable contract.

4 100. Golden Hammer performed all of its obligations under the agreement, including by
5 developing, maintaining, and improving the software code and infrastructure of the ADS-B
6 Exchange platform.

7 101. Upon information and belief, ADS-B Exchange has breached the Services
8 Agreement by assigning, transferring, delegating, or subcontracting its rights under the Services
9 Agreement to JETNET.

10 102. Upon information and belief, ADS-B Exchange has also breached the Services
11 Agreement by transferring or sublicensing its limited license to use Golden Hammer intellectual
12 property under the Services Agreement to JETNET.

13 103. Upon information and belief, ADS-B Exchange has also breached the Services
14 Agreement by using Golden Hammer's confidential information and trade secrets for a purpose
15 other than exercising its rights and performing its obligations under the Services Agreement.

16 104. Upon information and belief, ADS-B Exchange has also breached the Services
17 Agreement by disclosing Golden Hammer's confidential information and trade secrets to
18 unauthorized parties, including JETNET.

19 105. As a result of ADS-B Exchange's breach of the Services Agreement, Golden
20 Hammer has been injured and faces further irreparable harm. Golden Hammer is threatened with
21 losing its trade secrets and confidential information, causing damages in amounts which may be
22 impossible to determine.

23 **THIRD CAUSE OF ACTION**

24 **Intentional Interference With Contractual Relations**

25 **(Against Defendant JETNET)**

26 106. Golden Hammer hereby incorporates the previous paragraphs of this Complaint by
27 reference as though fully set forth herein.

28 107. Upon information and belief, JETNET knew prior to completing the acquisition that

1 ADS-B Exchange hired Golden Hammer to perform software development and hosting services to
2 ADS-B Exchange.

3 108. Upon information and belief, JETNET knew prior to completing the acquisition that
4 ADS-B Exchange and Golden Hammer were parties to the Hosting and Services Agreements.

5 109. Upon information and belief, JETNET knew prior to completing the acquisition that
6 that Mr. Streufert attempted and failed to obtain Golden Hammer's consent to the transaction.

7 110. Upon information and belief, JETNET intentionally and knowingly induced ADS-B
8 Exchange to breach the Services Agreement by agreeing to purchase ADS-B Exchange without first
9 obtaining Golden Hammer's consent to assign and transfer Golden Hammer's confidential
10 information and trade secrets to JETNET.

11 111. Upon information and belief, JETNET should have known prior to completing the
12 transaction that ADS-B Exchange did not fully own or possess the right to transfer its software
13 platform to a third-party. Upon information and belief, JETNET acted with willful and conscious
14 disregard of the rights of others when it induced ADS-B Exchange to breach the Services
15 Agreement by offering compensation to ADS-B Exchange to sell and transfer information it should
16 have known did not completely belong to ADS-B Exchange.

17 112. Upon information and belief, JETNET intentionally induced ADS-B Exchange to
18 breach the Services Agreement by offering compensation to ADS-B Exchange or threatening to
19 withhold compensation from ADS-B Exchange unless ADS-B Exchange copied and transferred
20 Golden Hammer confidential information and trade secrets to JETNET.

21 113. Golden Hammer was harmed by the breach of the Services Agreement.

22 114. JETNET's intentional conduct inducing ADS-B Exchange to breach the Services
23 Agreement by assigning the Services Agreement and transferring Golden Hammer's confidential
24 information and trade secrets to JETNET was a substantial factor in causing Golden Hammer harm.

25 **FOURTH CAUSE OF ACTION**

26 **Violation of California Computer Fraud and Abuse Act, Cal. Pen. Code §§ 502(c)**

27 **(Against Defendants Streufert and JETNET)**

28 115. Golden Hammer hereby incorporates the previous paragraphs of this Complaint by

1 reference as though fully set forth herein.

2 116. Golden Hammer is the sole owner or lessee of the computers, computer systems,
3 computer networks, and data that Defendants accessed or caused to be accessed.

4 117. JETNET knowingly accessed Golden Hammer's computers, computer systems,
5 computer network, and data when its engineer used Mr. Streufert's credentials to login to a Golden
6 Hammer server.

7 118. JETNET violated California Penal Code § 502(c)(1), in that it knowingly accessed,
8 altered, damaged, deleted, and/or otherwise used without permission Golden Hammer's computers,
9 computer systems, and computer network to wrongfully control or obtain proprietary, confidential,
10 and trade secret information from Golden Hammer.

11 119. JETNET did not have Golden Hammer's permission to access, alter, damage, delete,
12 or otherwise use Golden Hammer's computers, computer systems, and computer networks.

13 120. JETNET violated California Penal Code § 502(c)(2), in that it knowingly accessed
14 and without permission, took, copied, and/or otherwise used data or documents from Golden
15 Hammer's computers, computer systems, or computer networks.

16 121. JETNET did not have Golden Hammer's permission to take, copy, or make use of
17 data and/or documents from Golden Hammer's computers, computer systems, and computer
18 networks.

19 122. JETNET violated California Penal Code § 502(c)(8) in that it knowingly introduced
20 into Golden Hammer's computers, computer systems, and/or computers networks a computer
21 contaminant. The shell scripts copied by a JETNET engineer onto a Golden Hammer computer
22 system contain instructions that are designed to record and transmit information without the intent
23 or permission of Golden Hammer.

24 123. Mr. Streufert knowingly accessed Golden Hammer's computers, computer systems,
25 computer network, and data when he logged into the bastion-host within Golden Hammer's
26 protected network. On information and belief, Mr. Streufert also knowingly accessed Golden
27 Hammer's computers, computer systems, computer networks, and data when he viewed, inspected,
28 instructed, and/or communicated with copies of Golden Hammer virtual machines, source code, and

1 software located on machines to which he had physical or administrative access.

2 124. Mr. Streufert violated California Penal Code § 502(c)(1), in that he knowingly
3 accessed, altered, damaged, deleted, and/or otherwise used without permission Golden Hammer's
4 computers, computer systems, and computer network to wrongfully control or obtain proprietary,
5 confidential, and trade secret information from Golden Hammer.

6 125. Mr. Streufert violated California Penal Code § 502(c)(2), in that he knowingly
7 accessed and without permission, took, copied, and/or otherwise used data or documents from
8 Golden Hammer's computers, computer systems, or computer networks.

9 126. Mr. Streufert violated California Penal Code § 502(c)(6) in that he knowingly, and
10 without permission provided and/or assisted JETNET in obtaining access or a means to access
11 Golden Hammer's computers, computer systems, and/or computer networks in violation of
12 California Penal Code § 502(c) as set forth above.

13 127. Mr. Streufert violated California Penal Code § 502(c)(7) in that he knowingly and
14 without permission caused Golden Hammer's computers, computer systems, and/or computer
15 networks to be accessed by JETNET.

16 128. Mr. Streufert did not have Golden Hammer's permission to take, copy, or make use
17 of data and/or documents from Golden Hammer's computer, computer system, and computer
18 network without its consent. Mr. Streufert did not have Golden Hammer's permission to provide his
19 credentials to a JETNET contractor, nor did he have permission to cause or assist JETNET in
20 accessing Golden Hammer's computers, computers systems, and/or computer networks to be
21 accessed by JETNET.

22 129. As direct and proximate cause of Defendants' unauthorized access and use, Golden
23 Hammer was forced to spend time and resources preserving the servers, environments, and files that
24 JETNET and Mr. Streufert accessed without authorization. It also was forced to incur the cost of
25 investigating its systems and computers in order to ascertain which Golden Hammer networks,
26 computers, and files that Mr. Streufert and JETNET accessed, altered, copied, took, and/or used
27 without Golden Hammer's permission.

28 130. As direct and proximate cause of Mr. Streufert and JETNET's conduct, Golden

1 Hammer continues to suffer damages including, but not limited to, the cost of investigating
2 Defendants conduct. Golden Hammer may suffer further losses as a result of JETNET and Mr.
3 Streufert continuing to use and/or sharing the information they obtained as a result of their
4 unauthorized conduct.

5 131. Mr. Streufert and JETNET's conduct has also caused Golden Hammer irreparable
6 injury. Unless restrained and enjoined, JETNET will continue to access the files that, on
7 information and belief, JETNET and Mr. Streufert took or enabled the other to take from Golden
8 Hammer's computers and files in violation of Section 502(c). Damages are not adequate to
9 compensate Golden Hammer for these actual and threatened injuries.

10 132. Mr. Streufert and JETNET's acts were willful, with oppression, fraud, and malice,
11 and justify an award of exemplary and punitive damages.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for judgment as follows:

14 1. For preliminary and permanent injunctive relief that will: (a) enjoin Defendants from
15 possessing, divulging, using, disclosing, or making available to any third person or entity Golden
16 Hammer's confidential information or trade secrets; (b) compels the return to Golden Hammer,
17 within five (5) days from entry of this Court's order, of any and all records, information and/or
18 documents in any form, received or copied from Golden Hammer, including all records,
19 information or documents created by JETNET, or anyone acting in concert with JETNET, based on
20 documents or information received or copied from Golden Hammer; (c) require Defendants to
21 preserve electronic evidence by prohibiting Defendants from destroying, altering, accessing, or
22 deleting, or secreting from discovery, any computer or electronic storage media or cloud storage
23 account containing Golden Hammer's information, except that access shall be permitted for
24 purposes of a forensic investigation; and (c) require Defendants to turn in or submit all of their
25 computers, electronic storage media, and cloud storage accounts for forensic inspection;

26 2. For compensatory damages in an amount to be proven at trial;

27 3. For exemplary and punitive damages pursuant to California Civil Code § 3426.3;
28 California Civil Code § 3294(a), and California Penal Code § 502(e);

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- 4. For interest to the extent permitted by law;
- 5. For reasonable attorneys' fees and costs; and
- 6. For such other and further relief as this Court deems just and proper.

DATED: September 5, 2023

Respectfully submitted,

By:  _____

Nick Sethi
Attorney for Plaintiff
GOLDEN HAMMER OPS, LLC

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DEMAND FOR JURY TRIAL

Plaintiff Golden Hammer hereby demands a jury trial on all claims so triable.

DATED: September 5, 2023

Respectfully submitted,

By:  _____

Nick Sethi

Attorney for Plaintiff
GOLDEN HAMMER OPS, LLC

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VERIFICATION

I, Gregory Rowlee, declare:


I am a Member of Golden Hammer Ops, LLC and am authorized to execute this verification on behalf of the company.

I have read the foregoing Complaint and know the contents thereof.

The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 5, 2023 at Fallbrook, California.

By: _____ 

Gregory Rowlee
Member of Golden Hammer Ops, LLC

EXHIBIT “A”

Master Services Agreement

This Services Agreement (this "**Agreement**"), effective as of the date the Customer electronically signs/acknowledges the Agreement (the "**Effective Date**"), is by and between Golden Hammer Services, Inc, with offices located at 24355 Creekside Rd. #801565, Santa Clarita, CA 91380 ("**Service Provider**") and ADS-B Exchange, with offices located at 15031 E Ridgeway Dr., Fountain Hills, AZ. 85268, requesting services and acknowledging this Agreement ("**Customer**" and together with Service Provider, the "**Parties**", and each a "**Party**").

WHEREAS, Service Provider has the capability and capacity to provide certain IT related and support services; and

WHEREAS, Customer desires to retain Service Provider to provide the services, and Service Provider is willing to perform such services under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Service Provider and Customer agree as follows:

1. **Services.** Service Provider shall provide to Customer the services (the "**Services**") set out in one or more statements of work to be issued by Service Provider (each, a "**Statement of Work**"). Additional Statements of Work shall be deemed issued and accepted only if signed by the Service Provider Contract Manager and the Customer Contract Manager, appointed pursuant to Section 2.1 and Section 3.1, respectively. The details of the method and manner for performance of the Services by Service Provider shall be under its own control, Customer being interested only in the results thereof.
2. **Service Provider Obligations.** Service Provider shall:
 - 2.1. Designate employees or contractors that it determines, in its sole discretion, to be capable of filling the following positions:
 - 2.1.1. A primary contact to act as its authorized representative with respect to all matters pertaining to this Agreement (the "**Service Provider Contract Manager**").
 - 2.1.2. A number of employees that it deems sufficient to perform the Services set out in each Statement of Work, (collectively, with the Service Provider Contract Manager, "**Provider Representatives**").
 - 2.2. Make no changes in Provider Representatives except:
 - 2.2.1. Following notice to Customer.
 - 2.2.2. Upon the resignation, termination, death or disability of an existing Provider Representative.
3. **Customer Obligations.** Customer shall:
 - 3.1. Designate one of its employees to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the "**Customer Contract Manager**"), with such designation to remain in force unless and until a successor Customer Contract Manager is appointed.
 - 3.2. Require that the Customer Contract Manager respond promptly to any reasonable requests from Service Provider for instructions, information or approvals required by Service Provider to provide the Services.
 - 3.3. Cooperate with Service Provider in its performance of the Services and provide access to Customer's premises, employees, contractors, and equipment as required to enable Service Provider to provide the Services.
 - 3.4. Take all steps necessary, including obtaining any required licenses or consents, to prevent Customer-caused delays in Service Provider's provision of the Services.

4. Fees and Expenses.
 - 4.1. In consideration of the provision of the Services by the Service Provider and the rights granted to Customer under this Agreement, Customer shall pay the fees set out in a Statement of Work furnished by Service Provider. Payment to Service Provider of such fees and the reimbursement of expenses pursuant to this Section 4 shall constitute payment in full for the performance of the Services.
 - 4.2. Unless otherwise stated, Customer shall reimburse Service Provider for all reasonable expenses incurred in accordance with the Statement of Work if such expenses have been pre-approved, in writing by the Customer Contract Manager.
 - 4.3. Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder; provided, that, in no event shall Customer pay or be responsible for any taxes imposed on, or with respect to, Service Provider's income, revenues, gross receipts, personnel or real or personal property or other assets.

5. Limited Warranty and Limitation of Liability.
 - 5.1. Service Provider warrants that it shall perform the Services:
 - 5.1.1. In accordance with the terms and subject to the conditions set out in the respective Statement of Work and this Agreement.
 - 5.1.2. Using personnel of reasonable skill, experience and qualifications.
 - 5.1.3. In a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services.
 - 5.2. Service Provider's sole and exclusive liability and Customer's sole and exclusive remedy for breach of this warranty shall be as follows:
 - 5.2.1. Service Provider shall use reasonable commercial efforts to promptly cure any such breach; provided, that if Service Provider cannot cure such breach within a reasonable time (but no more than thirty days) after Customer's written notice of such breach, Customer may, at its option, terminate the Agreement by serving written notice of termination in accordance with this Agreement.
 - 5.2.2. In the event the Agreement is terminated pursuant to Section 5.2.1 above, Service Provider shall within 30 days after the effective date of termination, refund to Customer any fees paid by the Customer as of the date of termination for the Service or Deliverables, less a deduction equal to the fees for receipt or use of such Deliverables or Service up to and including the date of termination on a pro-rated basis.
 - 5.2.3. The foregoing remedy shall not be available unless Customer provides written notice of such breach within 30 days after receiving such Service or Deliverable by Customer.

6. SERVICE PROVIDER MAKES NO WARRANTIES EXCEPT FOR THAT PROVIDED IN SECTION 5.1, ABOVE. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.

7. Intellectual Property. All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to all documents, work product and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of the Service Provider in the course of performing the Services, including any items identified as such in the Statement of Work (collectively, the "**Deliverables**") except for any Confidential Information of Customer or customer materials shall be owned by Service Provider. Service Provider hereby grants Customer a license to use all Intellectual Property Rights in the Deliverables free of additional charge and on a non-exclusive worldwidenon-transferable, non-sublicenseable, fully paid-up, royalty-free and perpetual basis to the extent necessary to enable Customer to make reasonable use of the Deliverables and the Services.

8. Confidentiality. From time to time during the Term of this Agreement, either Party (as the "**Disclosing Party**") may disclose or make available to the other Party (as the "**Receiving Party**"), non-public, proprietary, and confidential information of Disclosing Party that, if disclosed in writing or other tangible form is clearly labeled as "confidential," or if disclosed orally, is identified as confidential when disclosed and within 10 days thereafter, is summarized in writing and confirmed as confidential ("**Confidential Information**"); provided, however, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party's breach of this Section 8; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was in Receiving Party's possession prior to Disclosing Party's disclosure hereunder; or (d) was or is independently developed by Receiving Party without using any Confidential Information. The Receiving Party shall: (x) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (y) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (z) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's Group who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

If the Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at Disclosing Party's sole cost and expense, a protective order or other remedy. For purposes of this Section 7 only, Receiving Party's Group shall mean the Receiving Party's affiliates and its or their employees, officers, directors, manager, independent contractors and service providers.



9. Term, Termination and Survival.
- 9.1. This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services under all Statements of Work unless sooner terminated under this Agreement.
- 9.2. Either Party may terminate this Agreement, effective upon written notice to the other Party (the "**Defaulting Party**"), if the Defaulting Party:
- 9.2.1. Materially breaches this Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, the Defaulting Party does not cure such breach within 30 days after receipt of written notice of such breach.
- 9.2.2. Becomes insolvent or admits its inability to pay its debts generally as they become due.
- 9.2.3. Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within 5 business days or is not dismissed or vacated within 45 business days after filing.
- 9.2.4. Is dissolved or liquidated or takes any corporate action for such purpose.
- 9.2.5. Makes a general assignment for the benefit of creditors.
- 9.2.6. Has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- 9.3. Notwithstanding anything to the contrary in Section 9.2, Service Provider may terminate this Agreement before the expiration date of the Term on written notice if Customer fails to pay any amount when due hereunder or in the Service Agreement: (a) and such failure continues for 10 days after Customer's receipt of written notice of nonpayment; or (b) more than 3 times in any two month period;
- 9.4. The rights and obligations of the parties set forth in this Section 9, and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

10. Limitation of Liability.

- 10.1. IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 10.2. IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER PURSUANT TO THE APPLICABLE STATEMENT OF WORK IN THE ONE-YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.
11. Entire Agreement. This Agreement, including and together with any related Statements of Work, exhibits, schedules, attachments and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.
12. Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "**Notice**", and with the correlative meaning "**Notify**") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier or certified or registered mail (in each case, return receipt requested, postage prepaid), or electronically (e.g. e-mail). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party; and (b) if the Party giving the Notice to the respective Party's address listed on Page 1 of this Agreement. A Party may change its contact information by sending a notice to the other Party complying with these notice requirements.
13. Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
14. Amendments. No amendment to or modification of or rescission, termination or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of this Agreement and signed by an authorized representative of each Party.
15. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
16. Assignment. Customer shall not assign, transfer, delegate or subcontract any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Service Provider. Any purported assignment or delegation in violation of this Section 16 shall be null and void. No assignment or delegation shall relieve the Customer of any of its obligations under this Agreement. Service Provider may assign any of its rights or delegate any of its obligations to any affiliate or to any person acquiring all or substantially all of service provider's assets without customer's consent.

17. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.
18. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
19. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
20. Choice of Law. This Agreement and all related documents and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of California, United States of America.
21. Choice of Forum. Each Party irrevocably and unconditionally agrees that it will pursue any matters, claims, litigation, action, or demands exclusively in the State of District Courts of Los Angeles County, California, United States of America.
22. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.
23. Force Majeure. The Service Provider shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Service Provider including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of 15 days, Customer shall be entitled to give notice in writing to Service Provider to terminate this Agreement.

THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BECOME EFFECTIVE WITH AN ELECTRONIC SIGNATURE AS OF THE DATE THE CUSTOMER ELECTROINCALLY SIGNED/ACKNOWLEDGED THIS AGREEMENT.

Service Provider	Customer
NAME <u>Gregory Rowlee</u>	NAME <u>Dan Streufert</u>
DATE SIGNED <u>06 / 08 / 2020</u>	DATE SIGNED <u>06 / 08 / 2020</u>
SIGNATURE <u></u>	SIGNATURE <u></u>

Addendum 1
Provider and Customer Primary Contacts

Service Provider Contract Manager		Customer Contract Manager	
NAME:	Gregory Rowlee	NAME:	Dan Streufert
EMAIL:	it@goldenhammerservices.com	EMAIL:	dan@adsbexchange.com
PHONE:		PHONE:	

STATEMENT OF WORK

Vendor Information

Project Manager Name: Gregory Rowlee
Company Name: Golden Hammer Services
Address:
Telephone Number:
Email Address: it@goldenhammerservices.com

Client Information

Project Sponsor Name: __Dan Streufert
Telephone Number: _____
Email Address: dan@adsbexchange.com

Statement of Work

This Statement of Work ("SOW") is entered into as of June 8th, 2020 ("SOW Effective Date") between **Golden Hammer Services** ("Vendor") and **ADS-B Exchange** ("Client") and is governed by the Master Services Agreement between Client and Vendor dated June 8th, 2020 ("Agreement"). Capitalized terms in this SOW will have the same meaning as set forth in the Agreement, unless otherwise stated herein. To the extent that the terms of this SOW conflict with any of the terms of the Agreement, the terms of the Agreement shall control and prevail except to the extent this SOW explicitly states that it intends to modify the conflicting terms, in which case the SOW supersedes the Agreement.

1. Overview

Vendor will be providing work associated with migrating the Clients current infrastructure to a new Hosting provider and then supporting that new Infrastructure on a monthly basis.

2. Term

This SOW shall take effect on the SOW Effective Date and shall automatically renew for another one (1) year term, unless either party provides notice to the other of its intent to terminate this agreement **within** thirty (30) days **of the end** of the then current term.

3. Project Resources

Project Cost: \$2,000 / month

Project Hours: Included in the monthly services, we offer 8 hours of support. The use of these hours will be detailed in the Project Tasks

Project Hour Cost: For any request by Client, that is above and beyond the Monthly cost, with it's included 8 hours of support/project work, will be charged at \$250/HR

4. Project Tasks

Migration of Current IT Infrastructure to new IT Infrastructure

1. Provide a new Hosting provider for the "Client"'s infrastructure
2. Develop a Plan that gives a step by step operation, with as little downtime as possible, for moving the current IT infrastructure to a new hosting facility
3. Where applicable, develop new virtual machines to improve and update current virtual machines at Client facilities
4. Implement the plan developed in #1, based on Clients approval of plan

Note: The initial migration and setup process is provided as part of the Monthly service. If further migration is needed at a later date, then that will be done via a separate Statement of Work

Monthly Managed Service of Client Infrastructure

1. Install, manage and monitor network, firewall and NAT

2. Install, manage and monitor internal/external DNS
3. Develop and maintain Clients VMWare operation
 - a. Develop and maintain virtual machines
 - b. Develop and maintain SAN
 - c. Setup, maintain, and secure external access
4. Provide:
 - a. Infrastructure Map
 - b. Monitoring (visual graphs and data) of infrastructure
 - c. 24/7 on-call support for Client Infrastructure

Project, and Project Based Tasks

1. In any given month, 8 hours of our Tier 1 IT specialists will implement any of the possible following projects, given Client approval
 - a. Implement backup system of Infrastructure, data, and applications
 - b. Infrastructural architecture improvements
 - c. Application development
2. "Project Hours" will be used for any IT related event such as infrastructure migration, on call events, Client requests, etc.
 - a. In a given month, any hours left can and will be applied towards approved Client project work

5. Payment Terms & Schedule

Invoices: All rates must be quoted in U.S. dollars, and Client will pay in U.S. currency. Invoices must be paid thirty (30) days from receipt.

Expenses & Other Costs: In the event any expenses or costs in addition to the fees set forth above are required, Vendor will obtain Client’s written permission before proceeding with the expense, which will be billed separately to the Client.

6. Coordinators

For the purposes of this SOW, the Coordinators shall be:

VENDOR	TELEPHONE	EMAIL
Gregory Rowlee	-	it@goldenhammerservices.com
CLIENT	TELEPHONE	EMAIL
Dan Streufert	-	dan@adsbexchange.com

Appointment of a coordinator by each party shall mean – by virtue of the mere fact of appointing such coordinator – granting to such persons authority to act on behalf of such party and perform the respective actions specified herein.

It shall be possible for each party to replace its designated coordinator. In such a case an amendment or Change Order to the SOW shall not be required, and sending such information by e-mail or in writing to the other party in compliance with the Master Services Agreement shall be binding.

Acceptance and authorization

Signing below indicates acceptance of this SOW by both Client and Vendor and the timeline and deliverables outlined within.

IN WITNESS WHEREOF, the parties hereto each acting with proper authority have executed this SOW, under seal.

CLIENT

Dan Streufert

Full name

Daniel Streufert

Signature

06 / 08 / 2020

Date

VENDOR

Gregory Rowlee

Full name

g

Signature

06 / 08 / 2020

Date

TITLE	Golden Hammer Master Services Agreement + Work Order
FILE NAME	Golden Hamm...reement.pdf and 1 other
DOCUMENT ID	9e4eb395150fba887c18c5fd72cd913dc9eb84e3
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

Document History

 SENT	06 / 08 / 2020 17:25:27 UTC	Sent for signature to Gregory Rowlee (gregory@goldenhammerops.com) and Dan Streufert (dan@adsbexchange.com) from it@goldenhammerops.com IP: [REDACTED]
 VIEWED	06 / 09 / 2020 03:03:41 UTC	Viewed by Dan Streufert (dan@adsbexchange.com) IP: [REDACTED]
 VIEWED	06 / 09 / 2020 06:22:17 UTC	Viewed by Gregory Rowlee (gregory@goldenhammerops.com) IP: [REDACTED]
 SIGNED	06 / 09 / 2020 03:52:03 UTC	Signed by Dan Streufert (dan@adsbexchange.com) IP: [REDACTED]
 SIGNED	06 / 09 / 2020 06:22:40 UTC	Signed by Gregory Rowlee (gregory@goldenhammerops.com) IP: [REDACTED]
 COMPLETED	06 / 09 / 2020 06:22:40 UTC	The document has been completed.

EXHIBIT “B”

Golden Hammer Hosting Inc.

MASTER SERVICE AGREEMENT

This **MASTER SERVICE AGREEMENT** (this "**Agreement**") is entered into as follows:

EFFECTIVE DATE: June 8th, 2020

PARTIES:

ADS-B Exchange,
as "**Customer**"

and

GOLDEN HAMMER HOSTING INC.,
as "**Provider**"

WHEREAS, Customer desires to retain Provider to provide services and goods from time to time and Provider desires to provide such services and goods from time to time; and

WHEREAS, Customer and Provider desire to have a master agreement that sets forth the general terms and conditions with respect to such services and goods.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

ARTICLE 1 PURPOSE AND APPLICATION

Section 1.1 Major Contracts. If the Parties or their Affiliates elect to enter into a specific contract for a specific project, this Agreement shall not apply. Work being performed under a specific contract shall control. If there is no such specific contract, then this Agreement shall apply.

Section 1.2 Minor Purchases. If the Parties or their Affiliates enter into a purchase order for the purchase of goods or services, or a lease order for the lease of goods (including in each case an "Order"), such orders shall be subject to this Agreement and any conflict between the purchase or lease order and this Agreement shall be resolved in favor of this Agreement unless the purchase or lease order is in writing and expressly states that a particular provision is to control over this Agreement.

ARTICLE 2 DEFINITIONS

Section 2.1 "Affiliate" means any Person controlling, controlled by, or under common control with a Party. The term "control" as used in the preceding sentence means, with respect to a corporation, the right to exercise, directly or indirectly, more than fifty percent of the voting rights attributable to the shares of the controlled corporation, and with respect to any Person other than a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of such Person's management or policies.

Section 2.2 "Claim" or "Claims" means all claims, losses, liabilities, damages (excluding punitive and exemplary damages), causes of action, costs, judgments and awards, whether arising under contract, tort or other law.

Section 2.3 "Customer Group" means Customer, its Affiliates, contractors (other than Provider and other members of the Provider Group) joint ventures, co-lessees, managers, owners, officers, directors, employees, agents, invitees and consultants.

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Section 2.4 The term "**defend**" or "**defense**" shall include the obligation to pay reasonable attorneys' fees, court costs, experts' fees, and other reasonable costs incurred as a result of defending against a Claim as required by this Agreement.

Section 2.5 "**Order**" has the meaning set out in Section 4.1.1.

Section 2.6 "**Parties**" means Provider and Customer and each is individually a "**Party**".

Section 2.7 "**Person**" means an individual, partnership, joint venture, corporation, limited liability company, incorporated or unincorporated organization or other entity of any kind.

Section 2.8 "**Provider Group**" means Provider, its subcontractors, invitees, Affiliates, shareholders, members, managers, owners, officers, directors, employees, agents and consultants.

Section 2.9 "**Termination Notice**" has the meaning set out Section 3.2.2.

Section 2.10 "**Third Party**" or "**Third Parties**" means any Person other than a member of the Provider Group or the Customer Group.

ARTICLE 3 CONTRACT ADMINISTRATION

Section 3.1 Application. The Parties hereby cancel all prior master service agreements in which Customer is the expressly named party in the position of "Customer" and Provider is the expressly named party in the position of "Provider"; provided, however, that prior master service agreements shall continue to govern all work commenced during the term of such prior master service agreement.

Section 3.2 Term and Termination.

3.2.1 Term. This Agreement shall commence on the date set out above and shall terminate on the earlier to occur of (i) the date specified in a Termination Notice delivered pursuant to Section 3.2.2, or (ii) the written agreement of the Parties to terminate this Agreement.

3.2.2 Termination Notice. Either Party may terminate this Agreement prospectively as a master service agreement with respect to new work (i.e., work that is not subject to a then-current Order) by delivering a written notice ("**Termination Notice**") to the other Party specifying the date on which this Agreement shall terminate, which date shall be at least sixty (60) days after the date on which such notice is delivered to the other Party. For both Parties, a Termination Notice does not require any cause. For clarity, this termination right does not permit either Party to terminate an existing Order, and any existing Order shall survive any termination of this Agreement pursuant to this Section 3.2.2 and the terms of this Agreement shall apply to such Order for the duration of its term.

3.2.3 Survival. Notwithstanding such Termination Notice, the terms and conditions of this Agreement shall survive for all completed and then-current Orders. If this Agreement contemplates action or forbearance concerning such completed or current Orders after termination of this Agreement pursuant to Section 3.2.2, then this Agreement's provisions related to such action or forbearance shall survive termination of this Agreement for six years or until the applicable statute of limitation bars any Claim, whichever occurs first. If the Parties have specified specific shorter or longer survival periods in other sections of this Agreement, then those specific provisions shall control.

Section 3.3 Entire Agreement. This Agreement is the entire agreement between the Parties concerning the agreed general terms and conditions while the entire agreement for the work consists of both this Agreement. All prior negotiations, representations, understandings, and partial agreements concerning the subject matter of this Agreement are superseded by this Agreement and the Orders.

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Section 3.4 Amendments. No amendment, modification, waiver, or release of this Agreement's obligations shall be binding unless a writing of like import exists that (a) identifies the amended, modified, waived, or released obligation, (b) describes the nature of the amendment, modification, waiver, or release, and (c) is signed by each Party. To acknowledge or document various events during the term of this Agreement, a Party may from time to time sign the other Party's variously entitled forms, such as delivery tickets, labor tickets, rental tickets, bills of lading, sales orders, and other tickets or acknowledgements, but the terms and conditions of such forms shall not amend, modify, waive, or release any aspect of this Agreement.

Section 3.5 Assignment. Neither Party may assign this Agreement to any Person without the consent of the other Party; provided that either Party may assign this Agreement to a successor in connection with a merger, acquisition or change of control of such Party or the sale of all or substantially all of the assets of such Party that relate to this Agreement. Any purported assignment without such consent shall be void.

Section 3.6 Not An Order. This Agreement does not obligate (i) Customer to order goods or services from Provider or (ii) Provider to accept service orders, purchase orders, or lease orders from Customer.

ARTICLE 4 ORDERS

Section 4.1 Requirements.

4.1.1 Offer and Acceptance. All requests for goods or services shall be issued by Customer. Such requests may be in the form of work orders, purchase orders, lease orders or other similar documents. When issued, such requests are non-binding, negotiable offers. Such offers become a binding order ("**Order**") only after Customer and Provider have affirmatively agreed to all terms and conditions concerning the requested goods or services. The failure of Provider to respond to a work order, purchase order, lease order, or other request for work by Customer under this Agreement shall not result in a binding Order even though Customer and Provider may be considered "merchants" under the Uniform Commercial Code. Affirmative agreement by both Customer and Provider is required. If in response to a written purchase order or written lease order, or other written request containing all the material terms and conditions of an agreement, Provider delivers the goods, performs the services, or supplies the equipment or space set forth in such written order or written request, the Parties shall be deemed bound to the terms of the writing upon which Provider relied in so performing.

4.1.2 Oral Orders Permitted. An Order may be completely or partially oral (if confirmed via email or other writing); however, an Order will be considered as written even though it consists of an exchange of correspondence, whether by letter, facsimile, or e-mail, if the exchange includes all material terms and conditions, and such terms and conditions have been affirmatively agreed upon by both Customer and Provider.

4.1.3 Electronic Signature. The Parties expressly agree to the Uniform Electronic Transaction Act as adopted in the State of California. With respect to a written Order, if an individual places the words "Signed By" before his or her name, then the Order shall be conclusively presumed to have been signed with the equivalent of a handwritten or "wet" signature.

Section 4.2 Conflict with Agreement. If a conflict exists between a written Order and this Agreement, then the Order shall control to the extent of the conflict. If a conflict exists between an oral Order and this Agreement, then this Agreement shall control to the extent of the conflict. If a conflict exists between a written Order and an oral Order, then the written Order shall control to the extent of the conflict.

Section 4.3 Amendments. No amendment, modification, waiver, or release of a written Order shall be binding unless a writing of like import exists that (a) identifies the amended, modified, waived, or released obligation, (b) describes the nature of the amendment, modification, waiver, or release, and (c) is signed by each Party. An oral Order may be amended or modified without a written document provided that each Party agrees to the modification. To acknowledge or document various events during the term of this Agreement, a Party may from time to time sign the other Party's variously entitled forms, such as

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delivery tickets, labor tickets, bills of lading, sales orders, and other tickets or acknowledgements, but the terms and conditions of such forms shall not amend, modify, waive, or release any aspect of an Order.

Section 4.4 Termination. Orders may be terminated under this Agreement (i) as a remedy for an uncured default as set forth in the default provisions of this Agreement, (ii) for extended Force Majeure conditions as set forth in the Force Majeure provisions of this Agreement, or (iii) under such terms and conditions as may be set forth in the Order.

Section 4.5 Assignment.

4.5.1 Consent to Assign. Neither Party shall assign an Order without the prior written consent of the other Party; provided that either Party may assign an Order in connection with an assignment of this Agreement permitted under Section 3.5. Any purported assignment without such consent shall be void.

4.5.2 Assignee Bound/Assignor Not Released. Any authorized or permitted assignment of an Order by either Party shall be binding on the assigning Party's assignee. An authorized or permitted assignment shall not discharge the assigning Party from its obligations under an Order unless the other Party executes a written release. Unless the assigning Party obtains such a release, it shall remain responsible for the acts, defaults and omissions of any assignee as if they were the assigning Party's acts, defaults and omissions. The other Party may demand that the assigning Party fulfill its obligations under any assigned Order without first having to make such a request to such Party's assignee.

ARTICLE 5 RELATIONSHIP

Section 5.1 Independent Provider. Provider is Customer's independent contractor. Nothing in this Agreement shall be construed to create the relationship of partnership, principal and agent, joint venture, fiduciary and beneficiary or employer and employee between Customer and Provider, and neither Party shall have any authority whatsoever to commit or bind the other or any of its Affiliates. Customer shall designate the services it desires, but Provider shall decide how such services shall be performed. Customer is interested only in the results obtained, and has no control over the details of Provider's performance.

ARTICLE 6 WARRANTIES

Section 6.1 General Service Warranty. Provider warrants that it will perform all services provided pursuant to this Agreement in a good and workmanlike manner and in accordance with generally accepted industry practices applicable to such services.

Section 6.2 Express Warranties Only. EXCEPT FOR THE WARRANTY EXPRESSLY SET OUT IN SECTION 6.1, PROVIDER EXCLUDES ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED BY PROVIDER, AND THE GOODS SOLD OR LEASED BY PROVIDER, INCLUDING, WITHOUT LIMITATION, WARRANTIES FOR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WHETHER AT COMMON LAW OR IN CONTRACT OR TORT OR BY STATUTE, OR OTHERWISE, INCLUDING WITHOUT LIMITATION, STRICT LIABILITY AND NEGLIGENCE OF CONTRACTOR OR ITS SUBCONTRACTORS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, OR REPRESENTATIVES. IN NO EVENT SHALL PROVIDER BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS AND LOSS OF BUSINESS OPPORTUNITIES, ARISING OUT OF OR RELATING IN ANY WAY TO BREACH OF THE WARRANTY SET OUT IN SECTION 6.1.

ARTICLE 7 TITLE TO GOODS AND RISK OF LOSS

Section 7.1 Delivery Terms. All goods sold by Provider to Customer under this Agreement shall be sold ex works (Provider's facility).

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Section 7.2 Title and Risk of Loss. Unless otherwise stated in a written Order, the risk of loss of goods sold by Provider to Customer pursuant to this Agreement remains with Provider until the goods are at the disposition of Customer.

ARTICLE 8 TIMING AND SUSPENSION

Section 8.1 Time Requirements. If an Order specifies the time by which a service shall be performed or a good shall be delivered, Provider shall comply with such time requirement. If Customer changes such time requirements in any Order, Provider shall use reasonable efforts to meet such change if meeting such change is possible without any increased cost to Provider. If incurring additional costs may improve the chances of Provider meeting the revised timing requirement, Provider shall so notify Customer and provide an estimate of any such additional costs. If exercised within a reasonable time, Customer shall have the option to request that Provider meet the revised timing requirement and shall pay all such additional costs incurred by Provider in connection with meeting such revised timing requirement.

Section 8.2 Unspecified and New Time Requirements. If an Order does not specify a time by which a service shall be performed or a good shall be delivered, Customer and Provider may agree upon such time later, either in writing or orally. If Customer and Provider never agree on a time requirement, Provider shall nonetheless perform the work in a diligent manner.

Section 8.3 Acceptable Use Policy. Customer's use of Provider's services shall at all times comply with Provider's then-current Acceptable Use Policy as amended at Provider's sole discretion and notified to Customer from time to time. Provider shall notify Customer of complaints received by Provider regarding each incident of alleged violation of Provider's Acceptable Use Policy by Customer or third parties that have gained access to Provider's service through Customer. Customer shall promptly investigate all such complaints and take all necessary actions to remedy any actual violations of Provider's Acceptable Use Policy (including without limitation indemnifying Provider for any such violations). Provider may identify to the complainant that Customer, or a third party that gained access to the services through Customer, is investigating the complaint and may provide the complainant with the necessary information to contact Customer directly to resolve the complaint. Customer shall upon Provider's request promptly identify a representative for the purposes of receiving such communications.

ARTICLE 9 FORCE MAJEURE.

Section 9.1 Definition of Force Majeure Event. "Force Majeure Event" means acts of God, floods, blizzards, ice storms, volcanic eruptions and emanations, earthquakes, thaws, pandemics, viral outbreaks and/or state/national/international medical emergencies, named tropical storms, and hurricanes; insurrection, terrorism, revolution, piracy, and war; strikes, lockouts, and labor disputes; federal or state laws; ordinances, standards, rules and regulations of any governmental or public authorities having or asserting jurisdiction over the premises of either or both Parties; or similar causes (except financial) beyond the control of the affected Party and which, through the exercise of diligent effort, such Party cannot overcome.

Section 9.2 Excusable Force Majeure Events. Either Party shall be excused from complying with the terms and conditions of this Agreement and the applicable Order if, to the extent, and for as long as, such Party's compliance is delayed or prevented by a Force Majeure Event. A Force Majeure Event shall not excuse performing duties that are unrelated to the Force Majeure Event, including, without limitation, discharging financial obligations. Neither Party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to a Force Majeure Event; provided that Customer shall not be obligated to pay for any services not received because of a Force Majeure Event affecting Provider.

Section 9.3 Notice of Force Majeure Events. If a Party is rendered unable, wholly or in part, by a Force Majeure Event to perform its obligations under this Agreement or any applicable Order, that Party shall give prompt written notice detailing such Force Majeure Event to the other Party.

Section 9.4 Termination for Extended Force Majeure Events. If a Force Majeure Event continues without interruption for thirty (30) days, either Party may cancel the applicable Order by giving written notice to the other Party.

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ARTICLE 10 DEFAULT

Section 10.1 Notice of Default and Opportunity to Cure. If either Party fails to perform its obligations or otherwise violates the terms or conditions of this Agreement or any Order and such default continues for a period of ten (10) days after receipt of a written notice describing the default, then the non-defaulting Party may terminate all or part of the applicable Order.

Section 10.2 Provider Termination for Customer's Uncured Default. If Provider terminates all or part of an Order because of Customer's uncured default, Customer shall pay promptly to Provider the amounts due and not previously paid for (a) services completed prior to termination, (b) goods delivered prior to the termination, and (c) other reasonable and necessary amounts directly associated with the termination of the services, including but not limited to uninstalling and disposing of the Customer's hardware, and out-of-pocket costs associated with the cancellation or termination of any orders to purchase services or goods. Provider shall have no liability to Customer in respect of any data stored on the hardware disposed of by Provider pursuant to this Section 10.2.

Section 10.3 Remedies Not Exclusive. In addition to the remedies set forth in this Agreement, Customer and Provider shall have all other remedies available at law or in equity except for remedies specifically excluded by this Agreement.

ARTICLE 11 NOTICES

Section 11.1 Methods. This section concerns notices, including any Termination Notice, requests, demands, and other communications required or authorized by this Agreement. It does not apply to Customer's instructions to Provider or Provider's status reports to Customer. All notices, requests, demands, and other communications specifically required or authorized by this Agreement shall be written and shall be (a) delivered personally to the recipient's representative set out on the signature page of this Agreement, (b) mailed by registered mail or certified mail, return receipt requested, postage prepaid, to the recipient's address set out on the signature page of this Agreement, (c) sent by facsimile transmission to the recipient's facsimile number set out on the signature page of this Agreement, or (d) sent to the recipient's e-mail address set out on the signature page of this Agreement. A Party may change its contact information by sending a notice to the other Party complying with these notice requirements.

Section 11.2 Presumed Delivery. A personally delivered notice shall be conclusively presumed to have been delivered on the date reflected on a written receipt acknowledging delivery that is signed by a representative of the receiving Party. A mailed notice shall be conclusively presumed to have been delivered on the date reflected on the returned receipt that is signed by a representative of the receiving Party. A facsimile notice shall be conclusively presumed to have been delivered on the date reflected on the sending facsimile machine's automated printout that reflects that the entire transmission was successfully sent to the receiving Party's facsimile telephone number then in effect. An electronic mail notice shall be deemed delivered upon the electronic transmittal being sent unless the sender receives an electronic response within three hours of sending the transmittal that delivery of the transmittal failed. All notices received after normal business hours, on weekends, and on holidays shall be conclusively presumed to have been delivered on the next business day.

ARTICLE 12 CONFIDENTIALITY

Section 12.1 Customer Provided Information. Except as permitted by Section 16.3.3, information provided by Customer to Provider while performing services (including, without limitation, information regarding Customer's operations, methods, or processes) is proprietary to Customer and confidential. Provider shall not divulge such information to any Person other than a member of the Provider Group as necessary to provide the services in accordance with this Agreement and shall take all reasonable steps to ensure that each member of the Provider Group will not divulge such information to any other Person. Provider shall not use such information for any purpose detrimental to Customer. Provider's confidentiality and limitation of use obligation shall survive for two years following termination of this Agreement. The confidentiality and limitation of use obligation shall not apply where Provider can show that (a) such information is already known to Provider or its representatives or to others not bound by a duty of confidentiality, (b) such information is or becomes publicly available through no fault of Provider or its Master Service Agreement Golden Hammer Hosting Inc.

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representatives, (c) the furnishing or use of such information is required by, is necessary, or is appropriate in connection with legal (whether judicial, administrative, or legislative) proceedings, or (d) such information is developed by Provider independent of this Agreement or any Order. Before making a disclosure in a legal proceeding, Provider shall notify Customer, in writing, of the relevant circumstances. Notwithstanding the foregoing, Provider may provide any of its customers or potential customers who are bound by a non-disclosure agreement the name of Customer and a description of the services provided by Provider to Customer unless Customer's revokes such right in a written notice to Provider.

Section 12.2 Provider Provided Information. Information provided by Provider to Customer while performing services (including, without limitation, information regarding Provider's operations, methods, or processes) is proprietary to Provider and confidential. Customer shall not divulge such information and shall take all reasonable steps to ensure that each member of the Customer Group will not divulge such information to any other Person. Customer shall safeguard and protect all such information in its custody or control. Customer's confidentiality obligation shall survive for two years following the termination of this Agreement. The obligation of confidentiality shall not apply where (a) such information is already known to Customer or its representatives or to others not bound by a duty of confidentiality, (b) such information is or becomes publicly available through no fault of Customer or its representatives, (c) the furnishing or use of such information is required by, is necessary, or is appropriate in connection with legal (whether judicial, administrative, or legislative) proceedings, or (d) such information is developed by Customer independent of this Agreement or any Order. Before making a disclosure in a legal proceeding, Customer shall notify Provider, in writing, of the relevant circumstances.

Section 12.3 Injunctive Relief. Each Party hereby acknowledges and agrees that the confidential information provided to such Party by the other Party as described in this Article 12 is of the character as to render the same unique, and therefore agrees that in the event of any breach or threatened or potential breach of this Agreement by such Party, the other Party could be irreparably and immediately harmed and may not be made whole by monetary damages alone. In the event of such a breach or threatened or potential breach, and without prejudice to any other rights and remedies otherwise available, the other Party shall be entitled to seek equitable relief by way of an interim or permanent injunction or decree of specific performance without the requirement of posting any bond or other security.

ARTICLE 13 COMPENSATION AND INVOICING

Section 13.1 Compensation. Provider's compensation shall be set forth in each Order. If Provider's compensation is not set forth in any Order, then Provider's compensation with respect to such Order shall be in accordance with Provider's then current published price list unless otherwise agreed in writing.

Section 13.2 Billing and Payment Terms. Unless otherwise specified in the relevant Order, Provider shall issue invoices to Customer on a monthly basis. Each invoice will reflect the services to be provided or goods to be sold or leased by the Provider to the Customer during the upcoming month, except charges that are dependent on usage of service, which shall be invoiced in arrears. Customer shall pay each invoice within thirty days following the date of such invoice. Invoices for partial months shall be prorated based on a calendar month. Unless otherwise specified on the particular invoice, all payments shall be due and payable in U.S. Dollars or the currency of the location of the relevant goods or services. If expressly specified in an Order, Customer shall pay any relevant set up fees and a security deposit equal to the relevant monthly recurring charge concurrently with the placement of the relevant Order. Past due amounts will incur late fees of 1% per month beginning from the date first due that is ten days after Provider notifies Customer that such amounts are past due. Provider may cease providing services upon five days' prior notice to Customer if (i) Customer is late making payments on any Customer balance; (ii) Customer's check bounces, or (iii) Customer unreasonably disputes a credit card charge with a credit card entity without first disputing the charge with Provider.

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Section 13.3 Good Faith Disputes. If Customer, in good faith, disputes any invoice, in whole or in part, Customer shall notify Provider of the dispute, including sufficient detail of the nature of the claim, the amount, the relevant invoices, and information allowing Provider to identify the affected goods or services, within the time required for payment of the relevant invoice. Payment of the disputed amount may be withheld until settlement of the dispute, but payment shall be made of the undisputed portion in accordance with Section 13.2. Customer waives the right to dispute any charges not disputed within the time required for payment of the disputed invoice. In the event that the dispute is resolved against Customer, Customer promptly following such resolution shall pay to Provider such amounts plus any late fees associated with the disputed amount, such late fees to be calculated in accordance with Section 13.3 from the date the disputed invoice was originally due and payable.

Section 13.4 Taxes and Fees. All charges for service are exclusive of Applicable Taxes (as defined below). Customer will be responsible for all applicable taxes and third party fees that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, franchise or other taxes, fees, duties, charges or surcharges, however designated, imposed on, incident to, or based upon the provision, sale or use of the service by Customer (collectively "**Applicable Taxes**"). If Customer is entitled to an exemption from any Applicable Taxes for a particular service, Customer is responsible for presenting Provider with a valid exemption certificate (in a form reasonably acceptable to Provider). Provider shall give effect to any such exemption certificate on a prospective basis from and after Provider's receipt of such exemption certificate.

Section 13.5 Bandwidth Billing (IP). Unless otherwise set out in the relevant Order, Customer is responsible for all bandwidth charges associated with its use of the Provider's service. Provider shall invoice Customer for bandwidth based on the 95th percentile method. The 95th percentile method is defined as follows: Both incoming and outgoing bandwidth is measured (or sampled) from the switch or router and recorded in a log file. This is done every 5 minutes. At the end of the billing period, the higher of the two samples (in or out) are sorted from highest to lowest, and the top 5 percent (which equates to approximately 36 hours of a 30-day billing cycle) of data is discarded. The next highest measurement becomes the 'billable utilization' for the billing period.

Section 13.6 Software Acquisition Costs. Prices set out in Orders, unless designated as ["Fixed Fees not Subject to Increase for the Term of this Order"], shall be subject to increase if Provider's costs of acquiring rights to third-party software that forms a part of the services to be provided by Provider to Customer pursuant to such Order increase following the date of such Order, in which case the Provider may, upon notice to Customer and after receiving Customer's written approval, increase the price of the relevant services by an amount commensurate with the increase in the costs of acquiring the rights to such third-party software.

ARTICLE 14 ARRANGED PROCUREMENT

Section 14.1 Procurement by Provider. If Provider purchases or rents any equipment, supplies, materials, or products from a supplier, vendor, or other company at Customer's request or if Provider procures services from a supplier, vendor, or other company at Customer's request, Customer shall pay Provider the actual cost of such items and/or services plus Provider's then current administrative, fee.

Section 14.2 Reimbursement To Provider. Provider shall furnish to Customer copies of the supplier's, vendors, or other service provider's invoices covering items provided in connection with this Agreement. Provider shall request suppliers, vendors, or other companies to invoice Customer directly if Customer so advises in writing.

ARTICLE 15 ALLOCATION OF RISK; LIMITATIONS ON LIABILITY

Section 15.1 Contents of Communications. Provider shall have no liability or responsibility for the content of any communications transmitted via the Provider's network and services (except for content solely created by Provider), and Customer shall defend, indemnify, and hold Provider and its Affiliates and its and their respective officers, directors and employees harmless from any and all claims (including claims by governmental entities seeking to impose penal sanctions) related to such content or for Master Service Agreement

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claims by third parties relating to Customer's use of Provider's network and services. Provider provides only access to the Internet; Provider does not operate or control the information, services, opinions, or other content of the Internet. Customer shall make no claim whatsoever against Provider relating to the content of the Internet or respecting any information, product, service, or software ordered through or provided by virtue of the Internet, except to the extent such claim results from a breach of a warranty given by Provider in this Agreement.

Section 15.2 No Consequential Damages. PROVIDER WILL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, MULTIPLE, CONSEQUENTIAL OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL OR BUSINESS PROFITS, LOSS OF REVENUE, WORK STOPPAGE, DATA LOSS, OR COMPUTER FAILURE OR MALFUNCTION, WHETHER SUCH DAMAGES ARE ALLEGED IN TORT, CONTRACT, OR OTHERWISE, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Section 15.3 Limitation on Direct Damages. In no event shall Provider's total aggregate liability to Customer and its Affiliates under this Agreement exceed the least of (a) the amounts paid by Customer to Provider under the applicable Order, (b) the aggregate fees payable by Customer to Provider over the term of the applicable Order, and (c) the aggregate fees payable by Customer to Provider during the initial year of the term of the applicable Order.

Section 15.4 Exceptions to Limitation of Liability. The limitations of liability in this Article 15 shall not apply to a Party's gross negligence or willful misconduct.

Section 15.5 Certain Categories of Damages Specifically Excluded. Provider shall have no liability to Customer in respect of:

15.5.1 the costs of reloading, replacing, or recreating any of Customer's lost or damaged information, data or software;

15.5.2 the costs of replacing lost or damaged equipment or other materials;

15.5.3 the loss of the Customer's data.

Customer acknowledges that Provider's services are not intended to be used as the sole repository for Customer's data, and that Customer has been advised by Provider to maintain a copy of all of Customer's data on servers other than those provided or maintained by Provider, or located in Provider's facilities, pursuant to this Agreement.

Section 15.6 Mitigation. Each Party shall use reasonable efforts to mitigate damages for which the other Party is liable.

Section 15.7 Indemnification for Statutory Liability. Customer shall defend, indemnify, and hold Provider and its Affiliates and its and their respective officers, directors and employees harmless from any and all claims and proceedings by governmental entities arising from Customer's use of Provider's network and services for the storage of personal information pursuant to Massachusetts Regulation 201 CMR 17.00 (Standards for the Protection of Personal Information of Residents of the Commonwealth) and similar data protection laws and regulations.

ARTICLE 16 LEGAL ADMINISTRATION

Section 16.1 Legal Compliance Generally. Provider shall comply in all material respects with all federal, state, county, and municipal laws, ordinances, statutes, codes, rules, and regulations that

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apply to its services, products, materials, equipment, employees, or work sites to be used in performing its obligations under this Agreement or any Order issued under this Agreement.

Section 16.2 Governing Law. This Agreement and the Orders may govern services, products, materials, supplies, and equipment supplied by Provider to Customer in several different jurisdictions. With respect to the selection of the governing law in this section, the Parties stipulate that certainty of enforcement is an important expectation negotiated between the Parties in entering this Agreement and the Orders. This Agreement and the Orders shall be governed by and construed in accordance with the laws of the State of California (excluding principles of conflicts of laws that would require application of the substantive laws of another jurisdiction). Venue for the institution of any legal proceeding arising under this Agreement or any Order shall be in Los Angeles County, California.

Section 16.3 Miscellaneous.

16.3.1 Rules of Construction.

(a) All article and section references used in this Agreement are to articles and sections of this Agreement unless otherwise specified.

(b) If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb). Terms defined in the singular have corresponding meanings in the plural, and vice versa. Unless the context of this Agreement clearly requires otherwise, words importing the masculine gender shall include the feminine and neutral genders and vice versa. The words "hereby" and "herein," and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not any particular section or article in which such words appear.

(c) The captions in this Agreement and each Order are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.

16.3.2 Severability of Provisions. If any provision of this Agreement or any Order is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. If any provision contained herein is, to any extent, held invalid or unenforceable in any respect under the laws governing this Agreement or such Order, the Parties shall take any actions necessary to render the remaining provisions of this Agreement valid and enforceable to the fullest extent permitted by law and, to the extent necessary, shall amend or otherwise modify this Agreement or such Order to replace any provision contained herein that is unenforceable with a valid and enforceable provision giving effect to the intent of the Parties to the greatest extent legally permissible.

16.3.3 Publicity. Customer hereby grants to Provider permission to publicly identify Customer as one of Provider's customers. Customer may revoke this permission at any time by giving notice of such revocation to Provider.

16.3.4 Binding Authority. Each Party represents that the individual executing this Agreement on behalf of that Party has full right and authority to execute this instrument on behalf of that Party and to bind such Party.

16.3.5 Apparent Authority. If a Person executing this Agreement, any Order, or any amendment, waiver, or other action with legal effect related to this Agreement or any Order has a title that includes one or more of the following or similar terms: "Agent," "Representative," "Attorney-in-fact," "Manager," "Director," "Supervisor," "Assistant Vice President," "Vice President," "Senior Vice President," "Executive Vice President," "President" or any similar title evidencing supervisory responsibility, then such Person shall be deemed to have apparent authority to execute the document. A Party may rely on such authority.

16.3.6 Duplicate Originals. This Agreement and any Order may be executed in duplicate originals, and each such instrument shall be deemed an original of this Agreement for all purposes.

Golden Hammer Hosting Inc.

Service Work Order

Monthly Cost: \$2,500

Non-Recurring Charges: \$0.00

Contract Term: 12 Months

Type of Deployment: **STANDARD**

This Service Work Order (this "Order") is entered into this **June 8th, 2020** ("Effective Date") by and GOLDEN HAMMER HOSTING, INC. (the "Provider"), whose registered address is 24355 Creekside Rd. #801565, Santa Clarita, CA 91380, and ADS-B Exchange (the "Customer"), with offices located at 15031 E Ridgeway Dr., Fountain Hills, AZ. 85268. This Order is subject to the terms, conditions, and agreements set out in the Master Service Agreement between Customer and Provider (the "Agreement").

1. **Definitions.** In this Order:

- (a) Capitalized terms used but not defined in this Order shall have the meanings set out in the Agreement;
- (b) "IT Resources" shall mean resources such as processor, memory, disk, VM software, OS and network elements that comprise a cloud based infrastructure generally described as follows:

Description
Max CPU, 114 Ghz, 60th %percentile
Max Memory, 768 GB, 80th %percentile
SSD SAN - 12 TB
10G LAN
Hardware Based Firewalls
1 Gbit, 95% percentile 10G uplink, overages at contracted rate
24/7 Monitoring

Provider will only provide software listed in above work order. Any software not listed is the sole responsibility of Customer to provide.

- (c) "Dedicated Private Cloud" shall mean a set of physical resources dedicated to a customer environment.
- (d) "Deployment" shall mean the period of time beginning once the Provider has received a completed Resource Allocation Form from the Customer;
- (e) "Disaster" shall mean any event that causes the Customer to require a conversion of the Customer's Standby VM into a Virtual Machine;
- (f) "Disaster Notice" shall mean a notice from the Customer to the Provider that a Disaster has occurred;
- (g) "Image" shall mean a point-in-time snapshot of a Virtual Machine which acts as a backup and allows a Virtual Machine to be restored to its state at the time the backup was taken. The Provider is not responsible for the consistency of application-specific data such as a SQL, Oracle, or Exchange database.
- (h) "Standby VM" shall mean Cloud Resources that are pre-allocated by the Provider to the Customer for disaster recovery or similar applications in standby mode to allow for the storage of images of Virtual Machines; a Standby VM guarantees that the resources allocated to the environment will be available at the time of need.

Service Work Order

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(i) "Virtual Machine" shall mean a guest operating system such as Windows or Linux that runs as an isolated entity on a host and is separated from the physical resources it uses such that the host environment is able to dynamically assign those resources among several Virtual Machines. Customer is guaranteed the resources allocated to their environment by their contract terms.

2. **Term.** After the final day of the initial term as set out above, this Order shall renew on a month-to-month basis until terminated by 30 days' notice from either Party to the other Party. The initial day of your initial term will be provided via your deployment email. The final day of your initial term will be the last day of the term commitment starting from the initial day of your deployment.

3. **Customer's Obligations.**

(a) The Customer shall be obligated to pay the following fees:

(i) upon execution of this Order, the Setup Fee and the Security Deposit Fee (which Security Deposit Fee shall be refunded by the Provider to Customer within 60 days of the termination of this Agreement, provided that this Agreement does not terminate following a breach of this Agreement by Customer);

(ii) on a monthly basis throughout the term of this Order, the Monthly Fee and the Bandwidth Fee, both of which shall be prorated for the initial and final months of the term to reflect the number of days that the Provider provides the services described herein to the Customer; and

(b) The Customer is responsible for the following:

(i) If the Customer is providing existing images, the Customer must provide such images in a format consistent with Provider's guidelines;

(ii) If the Customer is providing licenses:

(1) such licenses must be provided prior to Deployment or the Customer will incur the full cost of Provider-provided licenses;

(2) the Customer is responsible for maintaining, updating and keeping current license information, or else risk an interruption of services;

(iii) Maintaining OS and applications installed on the Customer's Virtual Machines or in the Customer's Dedicated Private Cloud, including patching, upgrades or updates;

(iv) If the Customer upgrades OS during migration to Provider's Cloud Services, the Customer is solely responsible for fixing any resulting problems.

(v) If the Customer ships equipment to the Provider, Customer must give notice to the Provider prior to the shipping of such equipment, which notice will set out the tracking number for such shipment issued by the courier and shall include evidence that the Customer has insured the equipment contained in the shipment. The Provider shall have no liability or obligation in respect of equipment that arrives at the Provider's facilities in a damaged condition or with missing or corrupt data. Customer shall pay the Provider, at the Provider's then-current i-Tech rates, to convert data received by the Provider in a format other than that specified by the Provider, and to prepare equipment for reshipment to Customer.

4. **Deployment; Disabling.**

(a) Disabling the Virtual Server. If the Resources get infected, hacked, or are compromised in any way, and if it is determined by the Provider that there is a potential threat to the Provider's network or any of the Provider's other customers, the Provider can, in its sole discretion, contact the Customer and disable the Customer's Resources until the Customer can take the appropriate actions to resolve the issue or contact the Provider to resolve the issue and the Customer shall

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compensate the Provider at the Provider's then-current rates for such disablement. The Provider may disable the Services at anytime if the Provider reasonably believes that the Customer has violated the Provider's then-current acceptable use policy (which the Provider shall provide to the Customer promptly following a request therefore).

- (b) Disabling Storage. If storage resources are being utilized in excess of the Storage Limits as provided in section 8(a) below, the Provider may, in its sole discretion, disable the Customer's storage resources as the Provider in its sole discretion chooses to cause the Storage Limits to cease to be exceeded. The Provider shall not have any liability to the Customer in respect of any storage so disabled.

5. **Overages; Other Costs**

- (a) Uplink/Bandwidth Overages:
 - (i) \$0..69 / per mbit

6. **Billing.**

- (a) Billing of the Monthly Fee shall be on a monthly basis and shall begin as soon as the Resources are allocated and a technician chosen by the Provider determines that Installation (as defined below) is complete in accordance with the following procedure:
 - (i) The Provider shall deliver to the Customer a connection notice.
 - (ii) Upon receipt of the connection notice, the Customer shall have a period of twenty-four (24) hours to confirm that the service has been installed and is properly functioning.
 - (iii) Unless the Customer delivers written notice to the Provider within such twenty-four (24) hour period that the service is not installed in accordance with the Order, billing shall commence on the initial day of the initial term as set out above.
 - (iv) If the Customer notifies the Provider within such twenty-four hour time period that the Resources are not functioning properly, then the Provider shall correct any deficiencies in the Resources, notify the Customer via email that the Resources are functioning properly.
- (b) Installation shall include the following actions:
 - (i) Provisioning of default operating system install;
 - (ii) Assignment of IP addresses;
 - (iii) Assignment of administrator account to the Customer;
 - (iv) Verifying the virtual server/Cloud Resources are accessible via the internet.

7. **Cancellation of Service.** Cancellation of service shall be made with 30-day advanced written notice by Customer to the Provider; provided, however, that the Customer shall pay to the Provider concurrently with such service cancellation all amounts due to the Provider through the end of the then-current term of this Order if service is cancelled by the Customer prior to the end of the term of this Order. (excluding, for clarity, termination by Customer for cause pursuant to Section 10 of the Agreement). Provider may cancel the Agreement with 30-day advanced written notice to Customer if a breach of contract by Customer occurs.

8. **Miscellaneous**

- (a) Counterparts. This Order may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Facsimile signatures shall be sufficient to bind the parties to this Order

Service Work Order

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- (b) Conflict with Agreement. In the event of any conflict between this Order and the terms and conditions of the Agreement, the order of precedence is as follows: (1) this Order, then (2) the Agreement.

By signing this Order the undersigned agree to the terms and conditions stated above.

For the Customer:

Dan Streufert
ADS-B Exchange

Dan Streufert
Name (please print)

Daniel Streufert

Signature

06 / 08 / 2020

Date

For GOLDEN HAMMER HOSTING, INC.:

Gregory Rowlee____
Name (please print)

g

Signature

06 / 08 / 2020

Date

Addendum A - Service Level Agreement

Hardware Replacement

Dell Hardware: 4 Hour On Site Dell Support Contract

Internet and Resources Uptime

The Provider shall be obligated to ensure throughout the term of this Order that the Resources will be available for Customer's use 99% of the time in any given month; provided, however, that:

- (i) the Provider shall not be so obligated during times in which the Resources are unavailable due to scheduled or emergency maintenance;
- (ii) the Resources will be deemed to be unavailable for the Customer's use for the purposes of this section beginning when (a) the Customer is unable to transmit and receive data to or from the Resources (which inability is confirmed by the use of a looking glass site to be

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due to an issue with the Provider's equipment) and (b) such inability has been communicated to the Provider in sufficient detail to allow the Provider to open a case file in respect thereof;

- (iii) the Provider shall not be obligated to ensure the functioning of services or software running on the servers comprising the Resources for Customer's use; and
- (iv) the Resources availability guarantee set out in Addendum A applies to the virtual infrastructure being provided to the Customer by the Provider and does not extend to availability issues that arise as a result of issues with the Customer's or a third-party network provider's equipment or services.

The Customer's exclusive remedy for a breach by the Provider of this section shall be to require the Provider to credit the Customer one percent (1%) of the Monthly Fee for each hour that the Resources are not available for the Customer's use up to a limit of one hundred percent (100%) of the Monthly Fee for the affected virtual server in any single month. In order to request such a credit, the Customer must notify Provider of the request, with start/end dates and information on their request for credit.

TITLE	Golden Hammer Hosting MSA + Work Order
FILE NAME	Golden Hamm...ing MSA.pdf and 1 other
DOCUMENT ID	47336b3b964a3d622643949559d35416365e29a0
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

Document History

 SENT	06 / 08 / 2020 17:28:20 UTC	Sent for signature to Gregory Rowlee (gregory@goldenhammerops.com) and Dan Streufert (dan@adsbexchange.com) from it@goldenhammerops.com IP: [REDACTED]
 VIEWED	06 / 08 / 2020 22:15:15 UTC	Viewed by Gregory Rowlee (gregory@goldenhammerops.com) IP: [REDACTED]
 VIEWED	06 / 09 / 2020 03:53:06 UTC	Viewed by Dan Streufert (dan@adsbexchange.com) IP: [REDACTED]
 SIGNED	06 / 09 / 2020 04:13:48 UTC	Signed by Dan Streufert (dan@adsbexchange.com) IP: [REDACTED]
 SIGNED	06 / 09 / 2020 06:22:09 UTC	Signed by Gregory Rowlee (gregory@goldenhammerops.com) IP: [REDACTED]
 COMPLETED	06 / 09 / 2020 06:22:09 UTC	The document has been completed.

EXHIBIT “C”

Subject: Golden Hammer Contract

From: Dan – ADSBexchange <dan@adsbexchange.com>

Date: 1/3/23, 8:06 PM

To: Gregory <gregory@goldenhammerops.com>, Gregory <thewlanman@gmail.com>

Gregory,

As I mentioned, see attached document regarding the assignment of the contract and how I am envisioning compensating you for your work and assistance with the pending transition.

There is a significant amount of legalese here due to the fact that the original set of agreements had both an MSA and work orders, for both hosting and services. I asked my attorney to insert some explanatory comments that you may find helpful, which you should see in the margins.

Here are the changes that benefit you:

- Golden Hammer continues hosting the site.
- Doubling the “Hosting” portion of the fee from \$3100 to \$6100, given that we may use slightly more resources/CPU as we grow. This would increase your monthly from \$5600 to \$8700.
- Provides for a total bonus of \$150,000 to you (from me), paid as follows:
 - \$25,000 within 7 days of transaction close, then
 - A second payment of \$125,000. If you terminate prior to June 1, the amount would be pro-rated.

In return, you will:

- Allow assignment of the contract.
- Extend the 30-day notice of termination to 90-days.

Since we'll need time to make a contingency plan if you're not staying on board, we'd appreciate a response by end of the week.

Thanks,
Dan

Dan Streufert

Founder

ADSBexchange.com, LLC

dan@ADSBexchange.com

+1-480-331-4323

— Attachments: —

ADSBExchange.com LLC – Amendment to Golden Hammer Hosting, Inc. Master
Service Agreement (87506458v1)–c.docx

33.9 KB

AMENDMENT TO MASTER SERVICE AGREEMENT

THIS AMENDMENT TO MASTER SERVICE AGREEMENT (this “**Amendment**”), dated as of January __, 2023, is entered into by and between ADSBExchange.com, LLC an Arizona limited liability company (“**ADSB**”) and Golden Hammer Hosting Inc., a [_____] corporation (“**GH**,” and together with ADSB, hereinafter collectively referred to as the “**Parties**” and each individually as a “**Party**”). Capitalized terms not defined herein shall have the meanings ascribed to them in that certain Master Service Agreement, entered into by and between the Parties, effective as of June 8, 2020 (the “**Agreement**”), as amended by that certain Service Work Order dated June 9, 2021 (the “**Work Order**”).

RECITALS

WHEREAS, the Parties desire to amend the Agreement to, among other objectives described herein: (i) extend the term of the Agreement; and (ii) increase the compensation payable to GH pursuant to the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

AMENDMENT

1. Article 2. Article 2 of the Agreement is hereby amended to include the following additional definitions:

“**Section 2.11 “Qualified Transaction”** means a transaction whereby the Customer sells all or substantially all of its assets.

“**Section 2.12 “Transition Services”** means such services as reasonably requested by the Customer (or any Customer successor) in writing, in connection with the Customer’s (or any Customer successor’s) (i) transition of the services contemplated by the Agreement or any Work Order to a new service provider, or (ii) engagement of a new service provider to perform services consistent with the type(s) of services contemplated by the Agreement or any Work Order. Transition Services shall, for the avoidance of doubt, include access to any IT Resources or other systems deployed by the Provider in connection with the Agreement or any Work Order.

2. Section 3.2.1 of the Agreement. Section 3.2.1 of the Agreement is hereby amended and restated in its entirety to read as follows:

“Term. This Agreement shall commence on the date set out above and shall terminate on the date that there remain no outstanding Orders, unless otherwise agreed to in writing by the Parties.”

3. Section 3.2.2 of the Agreement. Section 3.2.2 of the Agreement is hereby deleted in its entirety.

4. Section 3.2.3 of the Agreement. Section 3.2.2 of the Agreement is hereby amended such that the words “Notwithstanding such Termination Notice,” in the first sentence, are deleted.

5. Section 3.3 of the Agreement. The first sentence of Section 3.3 is amended to read as follows:

Commented [DC1]: Note to Greg: This revision states that once there are no active work orders under this MSA, the MSA will expire automatically. Termination language was moved to the Work Order.

Commented [DC2]: Note to Greg: Because we moved termination language to the Work Order, we don’t need this.

Commented [DC3]: Note to Greg: this is the same language, without the first four words of the paragraph which are no longer relevant because we deleted 3.2.2 where “Termination Notice” was defined.

Commented [DC4]: Note to Greg: this just clarifies that the Work Order is part of this Agreement, which was mentioned at the end of the same paragraph but should have been included in the beginning.

"This Agreement, and each Work order entered into in connection herewith, together represent the entire agreement between the Parties concerning the subject matter herein and therein".

6. Section 3.5 of the Agreement. The last sentence of Section 3.5 of the Agreement is hereby deleted and replaced with the following:

"For the avoidance of doubt and notwithstanding anything to the contrary herein, no consent shall be required from Provider in connection with any purported assignment of this Agreement by Customer in connection with any Qualified Transaction".

Commented [DC5]: Note to Greg: Just wanted to clarify that this is assignable because the last sentence of the original paragraph contradicted assignability.

7. Work Order; Preamble: The Work Order preamble is hereby amended to reflect a Monthly Cost of \$6,200.

Commented [DC6]: Note to Greg: "Monthly Cost" is currently defined as \$3,100. This in effect doubles it.

8. Section 1(b) of the Work Order. Section 1(b) of the Work Order is hereby amended such that all "IT Resources" described in and required to be provided by the Provider pursuant to the table labeled "Description," are doubled. By way of example, the "IT Resource" starting with "Max CPU," is hereby amended to read "Max CPU, 304 Ghz, 50th %percentile..., " etc.

Commented [DC7]: []

9. Section 2 of the Work Order. Section 2 of the Work Order is hereby amended and restated in its entirety to read as follows:

"The term of this Work Order shall expire on June 1, 2023, provided however that at any time after the closing of a Qualified Transaction (as defined in the Agreement): (i) the Provider may terminate this Work Order upon ninety (90) days' advance written notice (a "Provider Notice") to the Customer, for any reason or for no reason whatsoever (a "Provider Termination") and (ii) the Customer (including any successor in connection with any Qualified Transaction) may terminate this Work Order upon thirty (30) days' advance written notice (a "Customer Notice," and together with any Provider Notice, hereinafter a "Termination Notice") to the Provider, for any reason or for no reason whatsoever (a "Customer Termination," and together with any Provider Termination, hereinafter a "Noticed Termination").

10. Section 3(a) of the Work Order. A new Section 3(b) shall be added to the Work Order that reads as follows:

"(i) Within seven (7) days of the closing of any Qualified Transaction, the Customer (and not any Customer successor, for the avoidance of doubt) shall pay to the Provider \$25,000, provided that the Provider has continued to provide services required by this Work Order until such seven (7) day anniversary.

(ii) Within seven (7) days of any Customer Termination, provided that the Provider performed Transition Services until the date of such Customer Termination (unless waived by Customer), Customer (and not any Customer successor, for the avoidance of doubt) shall pay to the Provider an amount equal to \$125,000.

Commented [DC8]: Note to Greg: This mean Dan pays, not any acquirer.

(iii) Within seven (7) days of any Provider Termination, provided that the Provider performed Transition Services until the date of such Provider Termination (unless waived

Commented [DC9]: Note to Greg: if Customer terminates and you provide transition services, you'll get paid the full 125k regardless

by Customer), Customer (and not any Customer successor, for the avoidance of doubt), shall pay to the Provider an amount equal to the product of (i) a fraction, the numerator of which is the number of days from the date of closing of the Qualified Transaction to the date of the Noticed Termination, and the denominator of which is the number of days between the date of closing of the Qualified Transaction and including June 1, inclusive, and (ii) \$125,000. For the avoidance of doubt by way of example, if the Provider Termination Date occurred 50 days after the closing of the Qualified Transaction, which closing occurred 100 days before June 1, then Provider would be entitled to payment of $(\$125,000) * (50/100)$ or \$62,500.

(iv) If this Work Order expires on June 1, then within seven (7) days thereof Customer (and not any Customer successor, for the avoidance of doubt) shall pay to the Provider an amount equal to \$125,000.

(v) For the avoidance of doubt, the payments described in Sections 3(a)(ii) and (iii) of this Work order are contingent on performance by Provider of the Transition Services to Customer's reasonable satisfaction."

11. Section 4 of the Work Order. A new Section 4(c) shall be added to the Work Order that reads as follows:

"Transition Services. From the date of receipt by either Party of a Termination Notice from the other Party until the date of the respective Noticed Termination, Provider shall use all commercially reasonable efforts to provide the Transition Services (as defined in the Agreement)."

12. Master Services Agreement: Consent. Golden Hammer Services Inc. ("GH Services"), an affiliate of GH, hereby consents to the assignment of that certain Master Services Agreement entered into by and between GH Services, dated June 8, 2020, in connection with any Qualified Transaction.

13. Ratification and Conflict. The Agreement, and each Work Order existing as of the date set forth above, are hereby ratified and confirmed, as modified by this Amendment, and are and shall each remain in full force and effect until terminated in accordance with their respective terms and conditions. If a conflict arises between the terms of this Amendment and the terms of either the Agreement or any Work Order, the terms of this Amendment shall control.

14. Governing Law. This Agreement Amendment shall be governed by and construed under the internal laws of the State of California.

15. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument, which may be sufficiently evidenced by one counterpart.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Commented [DC10]: Add bucket.

Commented [DC11]: Note to Greg: if you terminate and you provide transition services you'll get a pro-rated portion of the \$125k based on the number of days elapsed between the closing and June 1

Commented [DC12]: Note to Greg: this is the catch-all in case the agreement isn't terminated pursuant to one of the above scenarios.

Commented [DC13]: Note to Greg: the bonuses made available in this amendment are for provision of these transition services.

Commented [DC14]: Note to Greg: this says that other than the changes we're making the rest of the agreements remain the same.

IN WITNESS WHEREOF, each Party has caused its duly authorized representative to execute this Amendment, effective as of the day and year first above written.

ADSBEXCHANGE.COM LLC

By: _____

Name: Daniel Streufert

Title: Sole Member

GOLDEN HAMMER HOSTING, INC.

By: _____

Name:

Title:

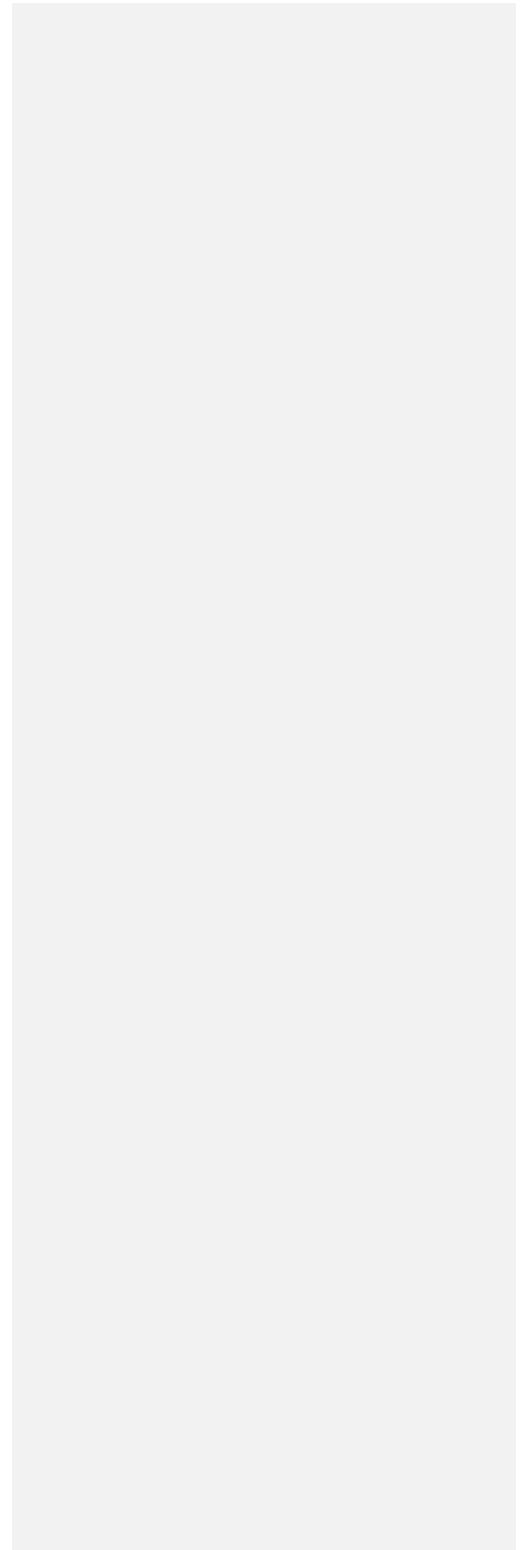


EXHIBIT “D”

ANDREW HARNISCH
ATTORNEY AT LAW

O. 602.252.1900
D. 602.412.1197

EMAIL
aharnisch@maypotenza.com



May Potenza
Baran & Gillespie

CENTRAL ARTS PLAZA
1850 NORTH CENTRAL AVE., 16TH FLOOR
PHOENIX, AZ 85004

March 3, 2023

VIA E-Mail Only

Erin M. Pawlowski, Member
2600 W. Big Beaver Rd., Ste 300
Troy, MI 48084
epawlowski@dickinson-wright.com

Re: Contract Dispute Between Golden Hammer Ops, LLC and ADS-B Exchange

Dear Ms. Pawlowski:

This law firm represents Golden Hammer Ops, LLC (“Golden Hammer”) with respect to the hosting and services contracts between Golden Hammer and ADS-B Exchange (“ADS-B”). Please direct future correspondence about the contracts to me.

Based on certain actions of ADS-B, including improperly accessing and attempting to obtain proprietary data from Golden Hammer’s system, Golden Hammer believes it has grounds to immediately terminate all agreements between the parties and cease all of Golden Hammer’s services to ADS-B. While ADS-B has asserted that it possesses a perpetual license to certain intellectual property belonging to Golden Hammer, Golden Hammer believes that any such license would expire upon termination of the contracts.

Prior to exercising any of its contractual termination rights, Golden Hammer has instructed me to reach out to you to determine ADS-B’s position regarding the defaults and to discuss ADS-B’s expressed position regarding the license. Please let me know your availability next week for a call.

Sincerely,

Andrew Harnisch, Esq.

AAH:mmg

EXHIBIT “E”

Subject: FW: ASDBx/Golden Hammer
From: Joshua Baird <JBaird@jetnet.com>
Date: 3/30/23, 7:02 AM
To: Ryan Bonnell <ryan@goldenhammerops.com>, "gregory@goldenhammerops.com" <gregory@goldenhammerops.com>

Gergory and Ryan,

Per your contractual obligations to provide operational support to ADS-B Exchange, please immediately restart the feeder and MLAT haproxy load balancers in the LA data center. Failure to do so by 5pm ET will be disruptive to our business, and we will seek all appropriate recourse in response to that failure. Please confirm the restarts status once complete.

Additionally, I am sharing the letter below that was delivered to Andrew Harnisch on your behalf this morning.

Regards,

Josh Baird

VP of Corporate Development
JETNET
101 First St., 2nd Fl., Utica, NY 13501
www.jetnet.com

From: Erin M. Pawlowski <EPawlowski@dickinson-wright.com>
Sent: Thursday, March 30, 2023 9:58 AM
To: Andrew Harnisch <AHarnisch@maypotenza.com>
Subject: ASDBx/Golden Hammer

Hi Andrew,

I am writing to notify you that ADSB Exchange ("ADSBx") migrated to a new hosting provider today. Despite the migration, ADSBx intends to continue to honor its contractual obligations, and expects that Golden Hammer will do likewise. Accordingly, until the Term End Date referenced below, ADSBx requests that Golden Hammer Ops, Golden Hammer Hosting Inc., and Golden Hammer Services (collectively, "Golden Hammer") take no action or in any way alter any existing services, network, and connections unless specifically requested by ADSBx. Golden Hammer has been paid in full for services rendered previously, and ADSBx will continue to make contractually obligated payments under the existing contracts through May 31, 2023, which will constitute the term end date of the existing contracts (the "Term End Date").

For the avoidance of doubt, this e-mail constitutes formal notice of ADSBx's intent not to renew any contracts with Golden Hammer and/or a 30-day notice of termination, as applicable, under the parties' various contracts.

Please note that this notice is without waiver of any rights ADSBx has under the parties' contracts, including but not limited to all rights and provisions that, by the express terms of the contracts or by their nature, should survive termination or expiration. This includes, but is not limited to, Golden Hammer's ongoing confidentiality obligations, which expressly survive for 2 years following termination. Among other things, these ongoing confidentiality obligations include the requirement that Golden Hammer not use confidential information of or relating to ADSBx "for any

purpose detrimental to [ADSBx].”

We are aware that Golden Hammer representatives have had direct communications with James Stanford and we have serious concerns that confidential information of ADSBx was disclosed to Mr. Stanford in violation of Golden Hammer’s confidentiality obligations. We are continuing to investigate this and certain related matters. However, we want to make it clear to Golden Hammer that we expect Golden Hammer’s compliance with all of its contractual obligations, including those that survive termination or expiration of the contracts, as well as compliance with all other applicable laws.

Finally, I wanted to briefly address your March 3, 2023 letter. As I relayed during our calls following receipt of the letter, neither ADSBx nor any of its affiliates improperly accessed, attempted to obtain, or obtained any proprietary data from Golden Hammer. ADSBx was and remains in compliance with all of its contractual obligations to Golden Hammer.

We appreciate your assistance with this matter and your client’s anticipated cooperation. Please feel free to reach out to me if you’d like to discuss any of these matters.

Best,

Erin

Erin M. Pawlowski Member

2600 W. Big Beaver Rd.
Suite 300
Troy MI 48084

Phone 313-223-3031

Mobile 248-506-4011

Fax 844-670-6009

Email EPawlowski@dickinson-wright.com



DICKINSON WRIGHT PLLC

ARIZONA CALIFORNIA FLORIDA ILLINOIS KENTUCKY MICHIGAN NEVADA
OHIO TENNESSEE TEXAS WASHINGTON D.C. TORONTO

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EXHIBIT “F”

SETHI LEGAL, P.C.

111 CHESTNUT ST., SUITE 401, SAN FRANCISCO, CA 94111
415-890-5413 • NICK@SETHIPC.COM

Erin Pawlowski
Dickinson Wright LLP
2600 W. Big Beaver Rd.
Suite 300
Troy, MI 48084

Via Fedex and E-mail

May 23, 2023

Re: **Breach of Services Agreement with Golden Hammer**

Dear Counsel:

I represent Golden Hammer Ops, LLC (“Golden Hammer”), a hosting and services provider doing business with your client, ADSBEXCHANGE.COM, LLC (“ADS-B Exchange”) under the names of Golden Hammer Hosting, and Golden Hammer Services, respectively. As you are aware, Golden Hammer and ADS-B Exchange are counterparties in two contracts: (i) a Services Agreement by and between Golden Hammer Services and ADS-B Exchange dated July 08, 2020 (the “Services Agreement”); and (ii) a Hosting Agreement with Golden Hammer Hosting dated July 08, 2020 (the “Hosting Agreement,” and together with the Services Agreement, the “Agreements”). Pursuant to the Services Agreement, the parties executed two Statements of Work, the first dated June 8, 2020 (“SOW 1”) and a second dated June 9, 2021 (“SOW 2”).

I write concerning the acquisition of ADS-B Exchange by JETNET, LLC (“JETNET” and together with ADS-B Exchange, the “JETNET Parties”) announced by Press Release on January 20th of this year (the “Acquisition”), and ADS-B Exchange’s improper transfer of Golden Hammer’s intellectual property to JETNET without first obtaining Golden Hammer’s consent.

Due to this improper transfer, as set forth below, Golden Hammer hereby notifies ADS-B Exchange it has terminated the Services Agreement pursuant to Section 9.2.1 for the incurable material breach of provisions restricting the assignment, transfer, and sublicense of the Services Agreement and Golden Hammer Technology without Golden Hammer’s prior written consent. The termination of the Service Agreement also terminates any rights, licenses, and access that ADS-B Exchange may have had to the software code, network configurations, build tools, and other intellectual property of Golden Hammer.

Per the Services Agreement, Golden Hammer designed, developed, configured, and implemented various software, network, and database services to process the vast amount of ADS-

B data it received from users around the world. This was no small task, due in part, to the complexities of real-time data processing and the growing popularity of the company in the press and online. It required Golden Hammer to write code and implement unique processes to build, configure, operate, and scale dozens of interconnected services (collectively, the “Golden Hammer Technology”) including but not limited to those necessary for real-time:

- ingestion of data in multiple data formats from tens of thousands of ADS-B receivers worldwide;
- inspection and routing of incoming data packets to one of dozens of servers;
- parsing, validating, and deduplicating the raw data in order to maintain a useful dataset;
- calculating the position of aircraft and extrapolating other information based on the context of incoming data and signal multilateration;
- translating the position of aircraft into vectors for display output;
- generating and rendering the real-time flight map and client-visible data;
- continuously building, integrating, and deploying the platform; and
- administration, maintenance, testing, and backup of all the hosted services.

Given the complexity of building and operating this platform—an investment of time and resources beyond what ADS-B Exchange could afford—Golden Hammer ensured that it would exclusively own the intellectual property rights to all materials it created under the Agreement and ADS-B Exchange would only receive a limited non-transferable license to use these materials. *Services Agreement* at § 7. For additional protection, Golden Hammer also restricted the assignment, transfer, or sublicense of the Services Agreement or the Golden Hammer Technology to a third-party without its consent. *Id.* at § 16. The language is unambiguous:

Customer shall not ***assign, transfer, delegate or subcontract*** any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Service Provider. Any purported assignment or delegation in violation of this Section 16 shall be null and void.

Id. at § 16 (emphasis added). Similarly, Golden Hammer included language to prevent ADS-B Exchange from sublicensing or transferring its limited license to use the Golden Hammer Technology. *Id.* at § 7.

Despite these restrictions on transfer, and without Golden Hammer’s consent, JETNET claimed that it acquired the ADS-Exchange technology platform on January 20th of this year noting that the platform “aggregates approximately 750,000 messages per second worldwide,” and “[would] enable JETNET to expand its flight data solutions with real-time information.” *Jetnet*

Acquires ADS-B Exchange, at 1 (Jan. 20, 2023) (the “Press Release”)¹. According to JETNET’s CEO Derek Swaim, this technology was integral to ADS-B Exchange’s value:

We’ve long admired ADS-B Exchange and ***know how strategic the company’s real-time data offerings are to the aviation industry***. Dan has done an incredible job building a fast-growing business that customers love. We believe he, ***and the ADS-B Exchange platform***, will bring significant value to our customers.

Id. (emphasis added).

In communications following the Acquisition, JETNET and its counsel have asserted rights under the Services Agreement, demanded access to source code and other proprietary Golden Hammer materials, and claimed that it has a perpetual license to use the Golden Hammer Technology:

- On January 29, 2023, Dan Streufert, President of ADS-B Exchange emailed Gregory Rowlee noting that “jetnet [sic] wants to improve and expand on the platform” and that Golden Hammer was now “a vendor for JETNET.”
- On January 31, 2023, Mr. Streufert emailed Mr. Rowlee and Ryan Bonnell, copying D. Swain, regarding their “concerns around future plans for the site.” In the email, he noted that “there are plan to improve things, add features, and contribute back to any open source repositories we may enhance.”
- On February 4th, 2023, Mr. Streufert again emailed Golden Hammer for access to its hosting site stating that “we need the ability to perform ordinary business tasks and maintenance such as adding/deleting API keys for our customers, troubleshooting application issues, making changes to web content, updates, and configuration backups.”
- On February 6th, 2023, Erin Pawlowski, identifying herself as “counsel to JETNET,” contacted Golden Hammer via email following up on Mr. Streufert’s February 4th request. Copied on the email was Bryan Landerman, Chief Technology Officer for Silversmith Capital Partners who Ms. Pawlowski noted was “assisting JETNET on the technology side.” Later that day, she clarified the request seeking, among other things, that Golden Hammer provide JETNET with “full administrative access and access to backups, including access to HAproxy servers, configurations, and encryption keys/passwords.”
- On February 23, 2023, Joshua Baird, JETNET’s Vice President of Corporate Development emailed Golden Hammer and noted that JETNET needed to make changes to the code, including “the backup script” and to “[e]xpend our API endpoints to increase functionality.” In the same email, Mr. Baird also asserted rights of ownership to a perpetual

¹ Accessed at <https://www.jetnet.com/news/jetnet-acquires-ads-b-exchange.html>

license to the Golden Hammer Technology and claimed that such license required Golden Hammer to “provid[e] what is necessary for us to run the software/platform” on non-Golden Hammer servers. He also asserted ADS-B Exchange’s contractual rights, “remind[ing]” Golden Hammer of its confidentiality obligations under the Agreements.

- On March 30th, Mr. Baird requested that Golden Hammer restart the load balancers, the purpose of which was to flush the DNS cache in order to switch from Golden Hammer servers running the platform to JETNET’s AWS servers running the platform. Almost simultaneously with this switch, Mr. Baird forwarded a letter to Golden Hammer from Ms. Pawlowski informing Golden Hammer that ADS-B Exchange would not “renew any contracts with Golden Hammer” when they expired on May 31, 2023.

But JETNET has no rights under the Services Agreement nor any rights to access or use Golden Hammer Technology. JETNET is not a party to the Services Agreement, and there are no third-party beneficiaries to the contract. *Services Agreement* at § 19. The sole license grant to use the Golden Hammer Technology in Section 7 extends only to “Customer” and not to Customer’s affiliates. *Id.* at § 7; *compare to id.* at § 8 (defining “Receiving Party’s Group” as including “affiliates and its or their employees, officers, directors, manager, independent contractors and service providers.”). Thus, the only way that JETNET could claim these rights is if ADS-B Exchange assigned, transferred, delegated, or subcontracted them to JETNET, each of which would have required Golden Hammer’s consent, which as noted previously, ADS-B Exchange failed to obtain.

The *Press Release* does not identify the method of acquisition. But there is no corporate structure which can render this transfer permissible under California law.² In California, unlike a jurisdiction such as Delaware, a stock purchase or statutory merger³ does not shield an acquirer from restrictions on assignment or transfer. *See, e.g., Meso Scale Diagnostics, LLC v. Roche Diagnostics GmbH*, 62 A.3d 62, 82 (Del. Ch. 2013) (comparing Delaware law to California). Instead, “California courts have consistently recognized that an assignment or transfer of rights does occur through a change in the legal form of ownership of a business.” *SQL Solutions Inc. v. Oracle Corp.*, No. C-91-1079 MHP, 1991 U.S. Dist. LEXIS 21097 (N.D. Cal. Dec. 18, 1991). In *SQL*, with facts similar to the present situation, the Court held that the licensor of a perpetual non-exclusive license could terminate an agreement for material breach because the licensee violated

² Both the Hosting Agreement and Services Agreement identify California law as controlling. *See* Hosting Agreement at § 16.2; Services Agreement at § 20.

³ As of the date of this letter, Golden Hammer is not aware of any evidence that a merger took place. For example, information listed for ADS-B Exchange on the Arizona Corporations Commission does not include any merger notices, and the last filing is a Certificate of Good Standing dated Jan. 18, 2023, two days prior to the Acquisition. *See* <https://ecorp.azcc.gov/EntitySearch/Index>

the agreement's anti-assignment clause when it "became a wholly-owned subsidiary" of the third-party acquirer. *Id.*

Even assuming, *arguendo*, that California adopted a rule such the one in Delaware, ADS-B Exchange would still be in material breach of the contract for delegating or subcontracting its rights under the Service Agreement. Rights under an intellectual property license do not automatically flow to a corporate parent or other affiliates. Rather, licensees of intellectual property cannot further assign or sublicense their rights without an express grant from the owner. *See Gardner v. Nike, Inc.*, 279 F.3d 774, 781 (9th Cir. 2002). Thus, even if a stock purchase is not an assignment, JETNET would still have no license to use the Golden Hammer Technology, as ADS-B Exchange is prohibited from "subcontracting" its' rights, *Services Agreement* at § 16, and forbidden from transferring or sublicensing the limited license grant set forth in Section 7.

Either ADS-B Exchange unlawfully assigned, transferred, delegated, or subcontracted the rights in the Services Agreement to JETNET, or it improperly transferred or sublicensed Golden Hammer Technology to its corporate parent, a separate corporate entity with no license to use it. Accordingly, because of this improper transfer or sublicense, Golden Hammer terminates the Services Agreement immediately for material breach.

* * *

Irrespective of whether the transfer of rights in the Services Agreement to JETNET is valid, the JETNET Parties' use of the Golden Hammer Technology vastly exceeds the scope of the license, and therefore, the JETNET Parties may be liable for copyright infringement in addition to breach of contract. *See MDY Industries, LLC v. Blizzard Entertainment, Inc.*, 629 F.3d 928, 938 (9th Cir. 2010) ("[I]f the licensee acts outside the scope of the license, the licensor may sue for copyright infringement"). Here, the license grant in Section 7 is quite narrow:

Service Provider hereby grants Customer a license to use all Intellectual Property Rights in the Deliverables free of additional charge and on a non-exclusive worldwd [sic] non-transferable, non-sublicenseable, fully paid-up, royalty-free and perpetual basis *to the extent necessary to enable Customer to make reasonable use of the Deliverables and the Services.*

Services Agreement, at § 7 (emphasis added). The purpose of this license was not to grant ADS-B Exchange unfettered rights to copy, modify, distribute, and use the Golden Hammer Technology as it sees fit, but simply to permit ADS-B Exchange to use the "Services," i.e., hosting of the platform with Golden Hammer pursuant to the Hosting Agreement. *See SOW 1*, at 1 ("[Golden Hammer Services] will be providing work associated with migrating the Clients current

infrastructure to a new Hosting provider and then supporting the new Infrastructure on a monthly basis.”).

It is evident from the JETNET Parties’ statements and actions, however, that JETNET’s plans far exceed simple hosting of the Golden Hammer Technology platform. JETNET’s express intent is to “add features,” [D. Streufert Jan 31 Email], “improve and expand on the platform,” [D. Streufert Jan 29 Email], and to “[e]xpand our API endpoints to increase functionality,” [J. Baird Feb 23 Email]. This intent is also self-evident from the Acquisition itself, the purpose of which is to “enable JETNET to expand its flight data solutions with real-time information.” *Press Release* at 1. Moreover, JETNET’s notice that it will let the Agreements expire on May 31st indicates that it intends to use Golden Hammer Technology without restriction in the future, and that it believes it does not need to compensate or seek approval from Golden Hammer. It seems unlikely that an adjudicator would consider such “use” of Golden Hammer Technology—copying the code and other materials freely, modifying them to create new features and products, and sharing them with an unlicensed party—to be “reasonable” and “necessary” to host the platform. *See SQL*, 1991 U.S. Dist. LEXIS 21097 at *14 (noting that “[t]he Ninth Circuit has recognized that modification of copyrighted software, which involves use ‘otherwise reserved to the copyright holder,’ is legally distinct from the general right to possess and use software.”) (citations omitted).

Additionally, the JETNET Parties may be liable for violating the anti-circumvention provisions set forth in the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 1201(a)(1)(a). Based on a forensic examination, Golden Hammer has evidence that a JETNET contractor, Justin Hill, moved access keys, bypassed the use of a required bastion server, and whitelisted an external storage service, the cumulative effect of which was to mask his activity and circumvent the authentication and authorization protocols protecting Golden Hammer’s copyrighted software code. This activity is precisely the type that the DMCA prohibits. *DMCA*, at § 1201(a)(3) (“to ‘circumvent a technical measure’ means to descramble a scrambled work, to decrypt an encrypted work, **or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure**, without the authority of the copyright owner.”) (emphasis added). It is worth noting that under Ninth Circuit precedent, such circumvention by itself gives rise to liability, and plaintiffs are not required to show that these acts themselves infringe or facilitate the infringement of a copyright. *See MDY Industries, LLC*, 629 F.3d at 952.

* * *

Post-termination or expiration of the Agreements, the JETNET Parties have no rights to use Golden Hammer Technology. Accordingly, Golden Hammer demands that ADS-B Exchange and JETNET immediately cease-and-desist usage of the Golden Hammer Technology. This includes copies of any documentation, databases, backups, configurations, software code, and build, maintenance, or deployment scripts, created and owned by Golden Hammer including,

without limitation, all virtual machines containing Golden Hammer Technology, including those obtained from Golden Hammer's servers. Golden Hammer also demands that both Mr. Streufert, as President of ADS-B Exchange, and a chief technical or operational officer from JETNET, certify in writing to Golden Hammer, that (i) he or she has diligently searched the applicable corporation's computer devices, servers, and networked services for Golden Hammer Technology; (ii) that any and all copies have been deleted or destroyed; and (iii) that the applicable corporation no longer possesses any Golden Hammer Technology or any derivative works or modifications of Golden Hammer Technology.

It is Golden Hammer's hope that the parties can reach an agreement without resorting to further legal measures. However, should the JETNET Parties continue to use the Golden Hammer Technology without a license, Golden Hammer is prepared to take all necessary actions to protect its rights by bringing claims against the JETNET Parties for, but not limited to, the JETNET Parties' breach of the Agreements, copyright infringement under the Copyright Act, 17 U.S.C. § 101, et seq., violation of the anti-circumvention provisions in the DMCA, 17 U.S.C. § 1201, and misappropriation of trade secrets under California's Uniform Trade Secrets Act, Cal. Civil Code §§ 3426 et seq.

Please feel free to reach out to me if you wish to schedule a call to discuss these issues. I look forward to your timely response.


Yours truly,

Nick Sethi
California Bar No. 321171

EXHIBIT “G”

June 16, 2023

Via Fedex and E-mail

Nick Sethi
Sethi Legal, P.C.
111 Chestnut St., Suite 401
San Francisco, CA 94111
nick@sethipc.com

Re: Response to May 23, 2023 Letter Concerning Alleged Breach of Services Agreement with Golden Hammer Ops, LLC

Dear Mr. Sethi,

This letter responds to your letter of May 23, 2023 on behalf of your client, Golden Hammer Ops, LLC (“Golden Hammer”). As you know, Dickinson Wright represents JETNET, L.L.C. (“JETNET”). Although this Firm does not represent ADSBexchange.com, LLC (“ADSBx”), this response letter has been prepared in coordination with Daniel Streufert, who was and remains ADSBx’s sole owner. To that end, Mr. Streufert has been consulted in connection with all aspects of this response and Golden Hammer’s allegations.¹

As an initial matter, ADSBx and JETNET respect the valid intellectual property rights of others. Accordingly, they take Golden Hammer’s allegations seriously and have investigated the underlying facts in connection with the preparation of this response.

With respect to your principal allegation that ADSBx “improper[ly] transfer[red] Golden Hammer’s intellectual property to JETNET without first obtaining Golden Hammer’s consent” (see May 23rd letter at 1), you are simply incorrect. ADSBx has not transferred—and, moreover, is not using—any of Golden Hammer’s intellectual property, nor did ADSBx improperly assign any contracts between ADSBx and Golden Hammer to JETNET.

Notably, your letter fails to identify any *specific* “software code, network configurations, build tools, [or] other intellectual property” that Golden Hammer allegedly owns—let alone setting forth a factual basis for such an ownership claim. (See, e.g., May 23rd letter at 2.) Furthermore, your letter is devoid of evidence supporting the assertion that ADSBx “improperly transferred or sublicensed Golden Hammer Technology to its corporate parent.” (*Id.* at 5.) While these failures prevent a focused investigation of Golden Hammer’s claims, our initial review has demonstrated a number of deficiencies associated with the general allegations outlined in your letter.

¹ Please also copy Mr. Streufert directly on any communication in response to this letter via e-mail to dan@adsbexchange.com.

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More specifically, the delineation of alleged “Golden Hammer Technology” contained on page two of your letter is nothing more than a set of broadly-worded data processes that are common throughout this and many other industries. As you must also know, Golden Hammer’s apparent IP-ownership claim is also heavily constricted by extensive reliance on both open-source libraries as well as other well-known, standard, and commonplace software (and data) processes. Indeed, Mr. Rowlee has acknowledged in public statements made on Discord that open source software comprises most of what he is now claiming is protected IP.² The obvious existence of such constrictions make your letter’s lack of specificity regarding the alleged “Golden Hammer Technology” even more glaring.

As your letter also tacitly acknowledges, ADSBx hired Golden Hammer to migrate ADSBx’s pre-existing technology platform from its former provider to Golden Hammer’s hosting service pursuant to the Statement of Work dated September 15, 2020. This fact further limits any potential scope of intellectual property allegedly belonging to Golden Hammer. ADSBx was formed in 2016 and successfully operated its business for years prior to its contractual, services relationship with Golden Hammer. Of course, Golden Hammer received no rights to any intellectual property, data, proprietary information, or business practices of ADSBx generated, developed, or deployed by ADSBx before (or during or after) its relationship with Golden Hammer. Thus, even if Golden Hammer could demonstrate valid possession of certain intellectual property rights, such rights have not been specifically identified, have not been infringed, and cannot include ADSBx’s own business processes, models, concepts, know-how, intellectual property, trade secrets, confidential and proprietary information, customer relationships, feeder data, goodwill, etc. Such property comprises what can be referred to generally as ADSBx’s “platform” and Golden Hammer simply cannot convert its contractual relationship to provide a hosting environment—and certain ancillary data migration services—into an ownership claim to ADSBx’s business. The arguments you make in your letter wholly ignore that ADSBx was in business providing the same services to its customers well before its relationship with Golden Hammer began and was free to take its business elsewhere.

Your letter prominently cites a press release and various communications by ADSBx and JETNET representatives as alleged evidence of wrongdoing. Statements relating to ADSBx’s platform and plans to expand ADSBx’s business are not evidence of wrongdoing and fail to demonstrate a factual basis for any of Golden Hammer’s claims.³ Further still, communications on behalf of JETNET and ADSBx attempting to mitigate damages to their business and remedy what

² Mr. Rowlee’s comments on Discord also reveal that he disclosed confidential and proprietary information of and related to ADSBx publicly, which is not only a violation of Golden Hammer’s contractual obligations, but also supports the assertion of numerous torts and statutory claims against Golden Hammer.

³ *Meso Scale Diagnostics, LLC v. Roche Diagnostics GmbH* and *SQL Solutions, Inc. v. Oracle Corp.* are cases in which a merger occurred, and are therefore inapplicable. JETNET has never asserted any contract rights or rights to valid Golden Hammer intellectual property on the basis of a merger, and, as set forth herein, is not utilizing any Golden Hammer intellectual property.

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was initially believed to be a technical issue with Golden Hammer's services similarly fail to support such claims. Indeed, as we know now, there was not an underlying technical issue, but instead an intentional interruption of service by your client intended to harm the JETNET and ADSBx businesses. As you are aware, on or around February 2, 2023, Golden Hammer abruptly terminated ADSBx's VPN access, which had been provided to ADSBx since the inception of the parties' hosting relationship, for which ADSBx paid, and which was squarely included in the scope of the parties' contracts. This intentional action along with Golden Hammer's other actions in concert with Mr. Stanford—who had no right to receive confidential information of or pertaining to ADSBx from Golden Hammer—demonstrate clear wrongdoing in violation of the parties' contracts, among potential tort and statutory claims.

Mr. Stanford's direct communications with ADSBx reveal that he improperly possessed confidential information related to ADSBx and the issues that ADSBx was working to resolve with Golden Hammer. By way of example and not limitation, in an e-mail dated February 15, 2023 from Mr. Stanford, he wrote that "there will be no more access to GHO infrastructure by Dan or anyone else at this time," referring specifically to services Golden Hammer had abruptly stopped in breach of its obligations to ADSBx. This communication is clear evidence that your client was in direct communications with Mr. Stanford about confidential matters. Your client has no rights to any confidential or proprietary information or materials of ADSBx or JETNET pursuant to Section 7 of the Services MSA. Moreover, pursuant to Section 12.1 of the Hosting MSA, your clients acknowledged and agreed that:

[I]nformation provided by Customer to Provider while performing services (including, without limitation, information regarding Customer's operations, methods, or processes) is proprietary to Customer and confidential. Provider shall not divulge such information to any Person other than a member of the Provider Group as necessary to provide the services in accordance with this Agreement and shall take all reasonable steps to ensure that each member of the Provider Group will not divulge such information to any other Person. Provider shall not use such information for any purpose detrimental to Customer. Provider's confidentiality and limitation of use obligation shall survive for two years following termination of this Agreement. (emphasis added)

The Hosting MSA is clear that your client's duty of confidentiality survives the termination of the Hosting MSA for two years. Importantly, in a March 30th e-mail to Mr. Harnisch, Golden Hammer's prior counsel, Golden Hammer was specifically advised that ADSBx and JETNET expected Golden Hammer's full compliance with its contractual and other legal obligations, including but not limited to the duty to keep ADSBx information confidential and not to use it "for any purpose detrimental to [ADSBx]." Golden Hammer has repeatedly breached this obligation, which has caused substantial harm. In addition to communications with Mr. Stanford, we are aware that Mr. Rowlee has posted confidential and proprietary information regarding ADSBx's business, including but not limited to specific feeder information, on Discord. As stated above, ADSBx and

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JETNET take intellectual property rights seriously. While they respect and will continue to respect the rights of others, they will also insist that their intellectual property and confidentiality rights are respected fully.

Your letter further purports to terminate the Services Agreement based on the assumption that ADSBx improperly assigned the Services Agreement, and asserts that any license that was granted pursuant to the Service Agreement is therefore terminated or alternatively that the “JETNET Parties” have exceeded the scope of the license. All of these arguments fail.

First, Golden Hammer does not have grounds to terminate the Services Agreement because ADSBx is not in breach. As set forth herein, there has been no improper assignment, transfer, or sublicense of any agreement between ADSBx and Golden Hammer, and therefore no breach of Section 16 of the Services Agreement.⁴ Furthermore, Ms. Pawlowski’s March 30th e-mail to Mr. Harnisch notified Golden Hammer that the parties’ contracts would be terminated and/or not renewing, but that Golden Hammer would continue to receive payment through May 31, 2023. Your purported termination is not only ineffective because ADSBx has not breached the Services Agreement, but is both untimely and mooted by the earlier notice of termination.

Second, although ADSBx, JETNET, and their affiliates are not using any Golden Hammer intellectual property and have not transferred any licenses,⁵ we nonetheless note that your purported termination of the parties’ agreements based on ADSBx’s alleged breach of the agreement would not impact the perpetual, royalty-free, fully-paid license granted to ADSBx under the Services Agreement. As already stated, ADSBx did not breach any of the parties’ agreements, including the Services Agreement. Moreover, there is no language found anywhere in the Services Agreement stating that termination of the Services Agreement—whether with or without cause—would terminate this license. On the contrary, Section 9.4 states that “[t]he rights and obligations of the parties set forth in this Section 9, and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.”

Third, you make the alternative argument that the “JETNET Parties” are exceeding the scope of the license granted under the Services Agreement and have therefore committed copyright infringement. This argument appears to be premised on the notion that Golden Hammer owns everything that belonged to ADSBx, which Golden Hammer was hosting for ADSBx. This is simply not the case.

You also assert that the “JETNET Parties” may be liable for violating the Digital Millennium

⁴ Notably, the Hosting Agreement is freely assignable without consent in the event of a change of control or asset sale.

⁵ For these reasons, *Gardner v. Nike, Inc.* is inapplicable. That case held that the 1976 Copyright Act does not allow a copyright licensee to transfer its rights under an exclusive license, without the consent of the original licensor. But the license here is not exclusive and was not transferred in any event.

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Copyright Act (“DMCA”) when Justin Hill, a contractor hired to assist Mr. Streufert, “moved access keys, bypassed the use of a required bastion server, and whitelisted an external storage service” Despite your assertion, Mr. Hill’s actions were not in any way wrongful. As Mr. Streufert advised Mr. Rowlee in a series of e-mails in late January 2023, Mr. Hill was a contractor hired by Mr. Streufert to assist with functions and work that Mr. Streufert historically performed with Golden Hammer’s *express consent and authorization in accordance with the parties’ written agreement*. Mr. Rowlee was directly informed of Mr. Hill’s identity and scope of work prior to his work commencing. Passing mention is also made to the California Uniform Trade Secrets Act, but nowhere does your letter allege the existence of any trade secrets, much less facts that would demonstrate misappropriation or misuse thereof.

As stated herein, ADSBx, JETNET, and their affiliates are not using any intellectual property of Golden Hammer and this letter serves to confirm the same. We trust that this letter clarifies the points raised in your letter and fully addresses any concerns (albeit unfounded) that your client has.

Sincerely,

/s/ John S. Artz

John S. Artz