

## **Exhibit A**

### **Software Terms of Use**

Smart Learning Systems, LLC (“**Provider**”) makes certain software available pursuant to these Software Terms of Use (these “**Terms**”). By signing the Order Form (defined below), Provider and the entity identified as the customer on the Order Form (the “**Customer**”) accept these Terms and agree to follow and be bound by them. Once the parties have signed the Order Form, these Terms constitute a legal, binding agreement between Customer and Provider.

The parties agree as follows:

1. **Definitions.** Capitalized terms shall have the meaning assigned to them in **Section 16** below.
2. **Access to Provider Materials and Services.**

2.1 **Access to Provider Materials.** Subject to and conditioned on Customer's payment of the Fees and compliance and performance in accordance with all other terms and conditions of the Agreement, Provider hereby authorizes Customer to access and use, solely in the Territory and during the Term, the Provider Materials that Provider may supply or make available to Customer, solely for the Permitted Use by and through Authorized Users in accordance with the Documentation and the conditions and limitations set forth in the Agreement. This authorization is non-exclusive and non-transferable.

2.2 **Service and System Control.** Except as otherwise expressly provided in the Agreement, as between the parties:

(a) Provider has and will retain sole control over the operation, provision, maintenance, and management of the Services and Provider Materials, including the: (i) Provider Systems; (ii) location(s) where any of the Services are performed; (iii) selection, deployment, modification, and replacement of the Software; and (iv) performance of Service maintenance, upgrades, corrections, and repairs; and

(b) Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Services and Provider Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions, or materials provided by any of them to the Services or Provider; (ii) results obtained from any use of the Services or Provider Materials; and (iii) conclusions, decisions, or actions based on such use.

2.3 **Service Management.** Each party shall, throughout the Term, maintain within its organization a service manager to serve as such party's primary point of contact for day-to-day communications, consultation, and decision-making regarding the Services. Each service manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under the Agreement. Each party shall ensure its service manager has the requisite organizational authority, skill, experience, and other qualifications to perform in such capacity. Each party shall use commercially reasonable efforts to maintain the same service manager in place throughout the Term. Each party's initial service manager shall be identified in the Order Form. If either party's

service manager ceases to be employed by such party or such party otherwise wishes to replace its service manager, such party shall promptly name a new service manager by written notice to the other party.

2.4 **Changes.** Provider reserves the right, in its discretion, to make any changes to the Services and Provider Materials that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of Provider's services to its customers, (ii) the competitive strength of or market for Provider's services, or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law.

2.5 **Subcontractors.** Provider may from time to time in its discretion engage third parties to perform Services (each, a "Subcontractor").

2.6 **Suspension or Termination of Services.** Provider may, directly or indirectly, and by use of a Provider Disabling Device or any other lawful means, suspend, terminate, or otherwise deny Customer's, any Authorized User's, or any other Person's access to or use of all or any part of the Services or Provider Materials, without incurring any resulting obligation or liability, if: (a) Provider receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Provider to do so; or (b) Provider believes, in its reasonable discretion, that: (i) Customer or any Authorized User has failed to comply with any term of the Agreement or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under the Agreement or in any manner that does not comply with any instruction or requirement of the Documentation; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Services; or (iii) the Agreement is not renewed, expires or is terminated. This **Section 2.6** does not limit any of Provider's other rights or remedies, whether at law, in equity or under the Agreement.

2.7 **Professional Services.** During the Term, Provider will perform for Customer any professional services (such as installation services, enhanced support services, training, consulting, or development services) as described in a separate statement of work. Any such statement of work (each, a "Statement of Work") shall reference and be subject to these Terms. Each Statement of Work would define (a) the services to be provided, (b) a description of any work product or other deliverables to be provided, (c) an estimated schedule, (d) the fees payable to Provider and the timing of the payment, and (e) any rights of termination relating to the particular Statement of Work. Each Statement of Work must be signed by an authorized representative of each party, and Provider will have no obligation to perform any additional professional services except pursuant to a mutually signed Statement of Work. Unless the Statement of Work provides otherwise, Provider will own the rights to any work product or other deliverables and all related Intellectual Property Rights arising from a Statement of Work, including without limitation any modifications to the Provider Materials, but such work product and deliverables would be licensed to Customer under the same terms and duration as the Software licensed to Customer hereunder.

### 3. **Restrictions.**

3.1 **Access Restrictions.** Customer agrees not to provide any Person with access to the Services or Providers Materials unless that Person is a Representative of Customer who qualifies as an Authorized User hereunder. Customer agrees to be responsible for the acts and omissions of its Representatives (including without limitations all Authorized Users). Any breach of the Agreement by a Customer Representative shall constitute a breach of the Agreement by Customer.

3.2 **Authorization Limitations and Restrictions.** Customer shall not, and shall not permit any Authorized User or any other Person to, access or use the Services or Provider Materials except as expressly

permitted by the Agreement and, in the case of Third Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as the Agreement expressly permits:

- (a) copy, modify, or create derivative works or improvements of the Services or Provider Materials;
- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Services or Provider Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or Provider Materials, in whole or in part;
- (d) bypass or breach any security device or protection used by the Services or Provider Materials;
- (e) access or use the Services or Provider Materials other than by an Authorized User through the use of his or her own then-valid Access Credentials;
- (f) bypass or breach any restrictions on the printing, downloading, or exporting of Provider Materials;
- (g) attempt to determine the identity of any de-identified individuals referenced in the Provider Materials;
- (h) input, upload, transmit, or otherwise provide to or through the Services or Provider Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;
- (i) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, Provider Systems or Provider's provision of services to any third party, in whole or in part;
- (j) remove, delete, alter or obscure any trademarks, Documentation, warranties, or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or Provider Materials, including any copy thereof;
- (k) access or use the Services or Provider Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other Provider customer), or that violates any applicable Law;
- (l) access or use the Services or Provider Materials for purposes of competitive analysis of the Services or Provider Materials, the development, provision or use of a competing software service or product or any other purpose that is to the Provider's detriment or commercial disadvantage; or

(m) otherwise access or use the Services or Provider Materials beyond the scope of the authorization granted under **Section 2.1**.

#### 4. **Customer Obligations.**

4.1 **Customer Systems and Cooperation.** Customer shall at all times during the Term: (a) set up, maintain, and operate in accordance with the Documentation all Customer Systems on or through which the Services are accessed or used; (b) if Provider Personnel are required to access Customer's premises and Customer Systems pursuant to a Statement of Work hereunder, provide Provider Personnel with such access to Customer's premises and Customer Systems as is necessary for Provider to perform the Services in accordance with the Documentation; and (c) provide all cooperation and assistance as Provider may reasonably request to enable Provider to exercise its rights and perform its obligations under and in connection with the Agreement.

4.2 **Effect of Customer Failure or Delay.** Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under the Agreement (each, a "**Customer Failure**").

4.3 **Corrective Action and Notice.** If Customer becomes aware of any actual or threatened activity prohibited by **Section 3.2**, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Provider Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Provider of any such actual or threatened activity.

#### 5. **Hosting and Service Levels.**

5.1 **Hosting of Software.** Provider will use commercially reasonable efforts to host, manage, operate, and maintain the Software for remote electronic access and use by Customer and its Authorized Users ("**Hosted Services**") 24 hours per day, seven days per week, every day of the year, except for: (a) Scheduled Downtime in accordance with **Section 5.4**; (b) Service downtime or degradation due to a Force Majeure Event; (c) any other circumstances beyond Provider's reasonable control, including Customer's or any Authorized User's use of Third Party Materials, misuse of the Hosted Services, or use of the Services other than in compliance with the terms of the Agreement and the Documentation; and (d) any suspension or termination of Customer's or any Authorized Users' access to or use of the Hosted Services as permitted by the Agreement.

5.2 **Service Levels.** Subject to the terms and conditions of the Agreement, Provider will use commercially reasonable efforts to make the Hosted Services Available at least 99.5% of the time as measured over the course of each calendar month during the Term (each such calendar month, a "**Service Period**"), excluding unavailability as a result of any of the Exceptions described below in this **Section 5.2** (the "**Availability Requirement**"). "**Service Level Failure**" means a material failure of the Hosted Services to meet the Availability Requirement. "**Available**" means the Hosted Services are available for access and use by Customer and its Authorized Users over the internet and operating in material accordance with the Documentation. For purposes of calculating the Availability Requirement, the following are "**Exceptions**" to the Availability Requirement, and neither the Hosted Services will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of Customer or its Authorized Users to access or use the Hosted Services that is due, in whole or in part, to any: (a) access to or use of the Hosted Services by Customer or any Authorized User, or using Customer's or an Authorized User's Access

Credentials, that does not comply with the Agreement and the Documentation; (b) Customer Failure; (c) Customer's or its Authorized User's internet connectivity; (d) Force Majeure Event (defined in **Section 14.1** below); (e) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Provider pursuant to the Agreement; (f) Scheduled Downtime (defined in **Section 5.4** below); or (g) disabling, suspension, or termination of the Services pursuant to **Section 2.6**.

**5.3 Service Level Failures and Remedies.** In the event of a Service Level Failure, Provider shall issue a credit to Customer in the amount of five percent (5%) of the prorated monthly cost of the subscription for the month(s) in which it experiences a Service Level Failure (each a "**Service Credit**"), provided that Provider has no obligation to issue any Service Credit unless (i) Customer reports the Service Failure to Provider immediately on becoming aware of it; and (ii) requests such Service Credit in writing within five days of the Service Level Failure. Any Service Credit payable to Customer under the Agreement may be applied by Customer if the parties agree to extend the current term or enter into Statements of Work related to the Software. Service Credits have no cash value and expire automatically upon the non-renewal, expiration, or termination of this Agreement. This **Section 5.3** sets forth Provider's sole obligation and liability and Customer's sole remedy for Customer's breach of **Section 5.1** or any Service Level Failure.

**5.4 Downtime.** Provider will use commercially reasonable efforts to: (a) provide reasonable times and dates of scheduled downtime for routine or other planned maintenance of the Hosted Services; and (b) give Customer at least two days prior notice of all scheduled outages of the Hosted Services ("**Scheduled Downtime**"). Provider will provide such notice by posting an alert within the Service.

**5.5 Support.** Provider will use commercially reasonable efforts to correct or find a work-around solution to any reproducible error in the Service identified by Customer that causes the Service to fail to operate in material conformance with the Documentation. Provider's support services will be provided in accordance with its service support schedule then in effect, which Provider may amend from time to time in its sole discretion. Customer may purchase enhanced support services separately at Provider's then-current rates.

## **6. Security.**

**6.1 Prohibited Data.** Customer acknowledges that the Services are not designed with security and access management for Processing the following categories of information: (a) data that is classified and/or used on the U.S. Munitions list, including software and technical data; (b) articles, services, and related technical data designated as defense articles or defense services; or (c) ITAR (International Traffic in Arms Regulations) related data (each of the foregoing, "**Prohibited Data**"). Customer shall not, and shall not permit any Authorized User or other Person to, provide any Prohibited Data to, or Process any Prohibited Data through, the Services, the Provider Systems, or any Provider Personnel. Customer is solely responsible for reviewing all Customer Data and shall ensure that no Customer Data constitutes or contains any Prohibited Data.

**6.2 Customer Control and Responsibility.** Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) the Customer Systems; (d) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and Provider Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

6.3 **Access and Security.** Customer shall employ all physical, administrative, and technical controls, screening and security procedures, and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Hosted Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Hosted Services.

## 7. **Fees; Payment Terms.**

7.1 **Fees.** Customer shall pay Provider the Fees in accordance with this **Section 7**.

7.2 **Taxes.** The Fees are exclusive of taxes and similar assessments. Customer is 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 or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income. If Provider is required to pay or collect any such taxes, Customer will promptly reimburse Provider for those amounts upon receipt of Provider's invoice and reasonable supporting documentation.

7.3 **Payment.** Promptly after the Go Live Date, Provider will deliver to Customer an invoice for the applicable Subscription Fee. Customer agrees to pay that invoiced amount within ten (10) days after the Go Live Date. Fees payable by Customer under a Statement of Work will be invoiced and payable pursuant to the terms stated therein. Customer shall pay all other Fees within 30 days after the date of the invoice therefor. Customer shall make all payments hereunder in US dollars in accordance with the payment method identified on the Order Form.

7.4 **Late Payment.** If Customer fails to make any payment when due then, in addition to all other remedies that may be available: (a) Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law; (b) Customer shall reimburse Provider for all costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees; and (c) if such failure continues for 10 days following written notice thereof, Provider may suspend performance of the Services and/or Customer's access to the Software until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer or any other Person by reason of such suspension.

7.5 **No Deductions or Setoffs.** All amounts payable to Provider under the Agreement shall be paid by Customer to Provider in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than Service Credits issued pursuant to **Section 5.3**, credits offered by Provider in any additional terms attached to the Agreement, or any deduction or withholding of tax as may be required by applicable Law).

7.6 **Renewal Fees.** If the Order Form indicates that Customer's right to use the Service automatically renews, and Customer wishes to continue using the Service in an upcoming Renewal Term, then Customer will pay Provider's then-current Subscription Fee for the Service before the commencement of the applicable Renewal Term. Provider may increase the Subscription Fee, effective as of the commencement of the next Renewal Term, by giving Customer written notice of the price increase at least 45 days before the end of the Initial Term or then-current Renewal Term, as applicable.

## 8. **Intellectual Property Rights.**

8.1 **Services and Provider Materials.** Nothing in the Agreement grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Provider Materials, or Third Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Services and Provider Materials, including all Intellectual Property Rights therein, are and will remain with Provider and the respective rights holders in the Third Party Materials. Customer has no right, license, or authorization with respect to any of the Services or Provider Materials (including Third Party Materials) except as expressly set forth in **Section 2.1** or the applicable third-party license, in each case subject to **Section 3**. All other rights in and to the Services and Provider Materials (including Third Party Materials) are expressly reserved by Provider and the respective third-party licensors.

8.2 **Feedback.** In the event Customer or its Representatives send to Provider any feedback, ideas, comments, improvements, or other suggestions, including without limitation custom work requests related to the Provider Materials (collectively, “**Feedback**”), Provider will have, and Customer hereby grants to Provider, an unrestricted, royalty-free, fully paid up, worldwide, sublicensable, transferable right to use such Feedback, at Provider’s sole discretion, in any manner and for any purpose (including, without limitation, to incorporate into or improve the Services or Provider Materials, and to reproduce, license, and distribute such improved Services or Provider Materials to others), without any obligation to provide notice, compensation, or attribution to Customer. Additionally, Feedback will not be considered Customer’s Confidential Information.

8.3 **Customer Data.** As between Customer and Provider, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in **Section 8.4**. Customer agrees to provide all Customer Data in the format requested by Provider.

8.4 **Consent to Use Customer Data.** Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data: (a) to Provider, its Subcontractors, and the Provider Personnel as are necessary or useful to perform the Services; and (b) to Provider as are necessary or useful to enforce the Agreement and exercise its rights and perform its hereunder.

## 9. **Confidentiality.**

9.1 **Confidential Information.** In connection with the Agreement, each party (as the “**Disclosing Party**”) may disclose or make available Confidential Information to the other party (as the “**Receiving Party**”). Subject to **Section 9.2**, “**Confidential Information**” means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party’s technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as “confidential”. Without limiting the foregoing, (a) all Provider Materials are the Confidential Information of Provider, and (b) the terms of the Agreement are the Confidential Information of each of the parties.

9.2 **Exclusions.** Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with the Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with the Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is

independently developed by the Receiving Party without reference to or use of any of the Disclosing Party's Confidential Information.

9.3 **Protection of Confidential Information.** As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

(a) not access or use the Disclosing Party's Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with the Agreement;

(b) except as may be permitted by and subject to its compliance with **Section 9.4**, not disclose or permit access to the Disclosing Party's Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with the Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this **Section 9.3**; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this **Section 9.3**;

(c) safeguard the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and

(d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this **Section 9**.

9.4 **Compelled Disclosures.** If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any of the Disclosing Party's Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under **Section 9.3**; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's request and sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this **Section 9.4**, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

## 10. **Termination.**

10.1 **Term.** The term of the Agreement shall commence on the Effective Date and shall continue for the duration of the Initial Term. If the Order Form indicates that the Agreement will not automatically renew, the Agreement will expire at the end of the Initial Term, unless the Term is extended by mutual written consent of the parties prior to the expiration of the Term. If the Order Form indicates that the Agreement will automatically renew, then the Agreement will automatically renew for consecutive, one-year renewal periods (each, a "**Renewal Term**") subject to Customer's payment of the applicable Subscription Fee(s) for the Renewal Term pursuant to **Section 7.6**, unless and until either party gives the other party written notice of non-renewal at least thirty 30 days

prior to the expiration of the Initial Term or then-current Renewal Term. Together, the Initial Term and any Renewal Terms shall constitute the “**Term**”.

**10.2 Termination Rights.** In addition to any other express termination right set forth elsewhere in the Agreement:

(a) Either party may terminate the Agreement for any reason by giving the other party at least 60 days’ prior written notice of termination;

(b) Provider may terminate the Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder, and such failure continues more than ten (10) days after Provider's delivery of written notice thereof; or (ii) breaches any of its obligations under **Section 3.2** (Authorization Limitations and Restrictions), **Section 6.1** (Prohibited Data), or **Section 9** (Confidentiality);

(c) either party may terminate the Agreement, effective on written notice to the other party, if the other party breaches the Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach; and

(d) either party may terminate the Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed 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.

**10.3 Effect of Expiration or Termination.** Upon any non-renewal, expiration, or termination of the Agreement, except as expressly otherwise provided in the Agreement:

(a) all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate;

(b) all outstanding Statements of Work under the Agreement will immediately terminate;

(c) Customer shall immediately cease all use of any Services and Provider Materials and: (i) promptly return to Provider, or at Provider's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on Provider's Confidential Information; (ii) permanently erase Provider's Confidential Information from all systems or electrical devices Customer directly or indirectly controls; and (iii) certify to Provider in a signed written instrument that it has complied with the requirements of this **Section 10.3(b)**;

(d) Provider may disable all Customer and Authorized User access to the Hosted Services and Provider Materials;

(e) If Provider terminates the Agreement pursuant to **Section 10.2(a)**, Provider will provide to Customer a pro rata refund of the Subscription Fee prepaid by Customer.

10.4 **Surviving Terms.** The provisions set forth in the following sections, and any other right or obligation of the parties in the Agreement that, by its nature, should survive non-renewal, termination, or expiration of the Agreement, will survive any non-renewal, expiration, or termination of the Agreement: **Sections 8, 9, 10.3, 10.4, 12, 13, and 15.**

## 11. **Representations and Warranties.**

11.1 **Mutual Representations and Warranties.** Each party represents and warrants to the other party that:

(a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

(b) the execution of the Agreement by its representative whose signature is set forth at the end of the Agreement has been duly authorized by all necessary corporate or organizational action of such party; and

(c) when executed and delivered by both parties, the Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

11.2 **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 11.1, ALL SERVICES AND PROVIDER MATERIALS ARE PROVIDED “AS IS” AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHER, AND PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR PROVIDER MATERIALS, OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE DOCUMENTATION, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. PROVIDER DOES NOT GUARANTEE, AND DISCLAIMS ALL LIABILITY RELATED TO, THE ACCURACY OF THE UNDERLYING SOURCE DATA FROM WHICH THE PROVIDER DATA IS DERIVED. CUSTOMER USES AND RELIES UPON SUCH DATA AT ITS OWN RISK. ALL THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS. PROVIDER HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CUSTOMER DATA.

## 12. **Indemnification.**

12.1 **Provider Indemnification.** Provider shall indemnify, defend, and hold harmless Customer from and against any and all Losses incurred by Customer based on any third party claims, suits, actions, or proceedings (each, an “**Action**”) made or brought against Customer due to the Services (excluding Customer Data

and Third Party Materials) infringing a U.S. Intellectual Property Right. The foregoing obligation does not apply to any Action or Losses arising out of or relating to any:

- (a) access to or use of the Services or Provider Materials in combination with any hardware, system, software, network, information, or other materials or service not provided or authorized in the Documentation or otherwise in writing by Provider;
- (b) modification of the Services or Provider Materials other than by or on behalf of Provider;
- (c) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of Provider, to the extent the Action or Losses would have been avoided had Customer done so in a timely manner after receiving written notice from Provider thereof; or
- (d) act, omission, or other matter described in **Section 12.2(a)**, **Section 12.2(b)**, or **Section 12.2(c)**, whether or not the same results in any Action against or Losses by any Provider indemnitee.

**12.2 Customer Indemnification.** Customer shall indemnify, defend, and hold harmless Provider and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors and assigns (“**Provider Indemnitees**”) from and against any and all Losses incurred by the Provider Indemnitees based on any Actions made or brought against the Provider Indemnitees arising out of or related to any of the following:

- (a) Customer Data, including any Processing of Customer Data by or on behalf of Provider in accordance with the Agreement;
- (b) any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of Customer or any Authorized User, including Provider's compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User; or
- (c) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants or obligations under the Agreement.

**12.3 Indemnification Procedure.** Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to **Section 12.1** or **Section 12.2**, as the case may be. The party seeking indemnification (the “**Indemnitee**”) shall cooperate with the other party (the “**Indemnitor**”) at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel reasonably acceptable to the Indemnitee to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this **Section 12.3** will not relieve the Indemnitor of its obligations under this **Section 12** except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

**12.4 Mitigation.** If any of the Services or Provider Materials are, or in Provider's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Customer's or any Authorized User's use of the Services or Provider Materials is enjoined or threatened to be enjoined, Provider may, at its option and sole cost and expense:

(a) obtain the right for Customer to continue to use the Services and Provider Materials materially as contemplated by the Agreement;

(b) modify or replace the Services and Provider Materials, in whole or in part, to seek to make the Services and Provider Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and Provider Materials, as applicable, under the Agreement; or

(c) by written notice to Customer, terminate the Agreement with respect to all or part of the Services and Provider Materials, and require Customer to immediately cease any use of the Services and Provider Materials or any specified part or feature thereof, and Provider will promptly refund to Customer, on a pro-rated basis, any Fees that Customer pre-paid for terminated Services or Provider Materials.

THIS SECTION 12 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND PROVIDER MATERIALS) INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

### 13. **Limitations of Liability.**

13.1 **EXCLUSION OF DAMAGES.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 13.3, IN NO EVENT WILL PROVIDER OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THE AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE, OR LOSS, INTERRUPTION, OR DELAY OF THE SERVICES, (c) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.2 **CAP ON MONETARY LIABILITY.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 13.3, IN NO EVENT WILL THE AGGREGATE LIABILITY OF PROVIDER UNDER OR IN CONNECTION WITH THE AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE FEES PAID BY CUSTOMER DURING THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.3 **Exceptions.** The exclusions and limitations in **Section 13.1** and **Section 13.2** do not apply to (a) Provider's obligations under **Section 12** (Indemnification), or (b) liability arising from Provider's gross

negligence, willful misconduct, or a breach of **Sections 3.2** (Authorization Limitation and Restrictions) or **9** (Confidentiality).

#### 14. **Force Majeure.**

14.1 **No Breach or Default.** In no event will Provider be liable or responsible to Customer, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of the Agreement, when and to the extent such failure or delay is caused by any circumstances beyond Provider's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of the Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either party may terminate the Agreement if a Force Majeure Event continues substantially uninterrupted for a period of 30 days or more.

14.2 **Affected Party Obligations.** In the event of any failure or delay caused by a Force Majeure Event, Provider shall give prompt written notice to Customer stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

#### 15. **Miscellaneous.**

15.1 **Further Assurances.** Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to the Agreement.

15.2 **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the 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.

15.3 **Public Announcements.** Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to the Agreement or otherwise use the other party's trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, in each case, without the prior written consent of the other party, provided, however, that Provider may, without Customer's consent, include Customer's name and/or other indicia in its lists of Provider's current or former customers of Provider in promotional and marketing materials.

15.4 **Notices.** Except as otherwise expressly set forth in the Agreement, all notices, requests, consents, claims, demands, waivers and other communications under the Agreement have binding legal effect only if in writing and addressed to a party at the address set forth on the Order Form (or to such other address or such other person that such party may designate from time to time in accordance with this **Section 15.4**). Notices sent in accordance with this **Section 15.4** will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature

required; and (c) on the fifth day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

**15.5 Non-Solicitation.** During the Term and for a period of twelve (12) months thereafter, Customer agrees that it shall not recruit or solicit for employment any Applicable Employee (defined below) of Provider, without prior written approval of Provider. Recruit or solicit, for purposes of this **Section 15.5**, does not include advertisements in general circulation media, such as newspapers, radio, television, trade publications, and/or internet job postings. For purposes of this **Section 15.5**, an “**Applicable Employee**” means an employee of Provider who was directly and substantively involved in any Services provided to or for Customer pursuant to a Statement of Work under this Agreement.

**15.6 Interpretation.** All references to the Order Form herein shall be interpreted as referring to the Order Form as amended. For purposes of the Agreement: (a) the words “include,” “includes” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to the Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in the Agreement: (x) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, the Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend the Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of the Agreement to the same extent as if they were set forth verbatim herein.

**15.7 Headings.** The headings in the Agreement are for reference only and do not affect the interpretation of the Agreement.

**15.8 Monitoring; Audit.** During the Term, Provider may monitor Customer’s use of the Software using electronic tools, scripts, software, or other utilities at any time without notice to Customer. During the Term and for one year following the non-renewal, expiration, or earlier termination of the Agreement, Provider or its nominee (including its accountants and auditors) may inspect and audit Customer’s use of the Services or Provider Materials under this Agreement. Any in-person audits, however, shall be conducted during regular business hours upon Provider’s request. In the event of an in-person audit, Customer shall make available all such books, records, equipment, information, and personnel, and provide all such cooperation and assistance, as may reasonably be requested by or on behalf of Provider with respect to such audit.

**15.9 Entire Agreement.** The Agreement, together with the Order Form and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of the Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of the Agreement, the related exhibits, schedules, attachments and appendices (other than an exception expressly set forth as such therein) and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, the Order Form, (b) second, the Agreement, and (c) third, any other documents incorporated herein by reference.

15.10 **Assignment.** Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under the Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Provider's prior written consent. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Customer (regardless of whether Customer is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under the Agreement for which Provider's prior written consent is required. No delegation or other transfer will relieve Customer of any of its obligations or performance under the Agreement. Any purported assignment, delegation or transfer in violation of this **Section 15.10** is void. Provider may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under the Agreement without Customer's consent. The Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

15.11 **No Third-party Beneficiaries.** The Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Agreement.

15.12 **Amendment and Modification; Waiver.** No amendment to or modification of the Agreement is effective unless it is in writing, identified as an amendment to the Agreement, and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the 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.

15.13 **Severability.** If any provision of the Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify the Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15.14 **Governing Law; Submission to Jurisdiction.** The Agreement is governed by and shall be construed in accordance with the internal laws of the State of North Carolina without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of North Carolina. Any legal suit, action, or proceeding arising out of or related to the Agreement or the licenses granted hereunder may be instituted in the federal courts of the United States or the courts of the State of North Carolina in each case located in Mecklenburg County, and each party irrevocably submits to the jurisdiction of such courts in any such suit, action or proceeding.

15.15 **Export Regulation.** The Services or Provider Materials may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Customer shall not, directly or indirectly, export, re-export, or release the Services or Provider Materials to, or make the Services or Provider Materials accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior

to exporting, re-exporting, releasing, or otherwise making the Services or Provider Materials available outside the US.

**15.16 US Government Rights.** Each of the Documentation and the Software is a “commercial item” as that term is defined at 48 C.F.R. § 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government licensees and their contractors.

**15.17 Changes in Law.** The terms of the Agreement are intended to be in compliance with all federal, state and local statutes, regulations and ordinances applicable on the date the Agreement takes effect including but not limited to, the Health Insurance Portability and Accountability Act of 1996, as amended. The parties agree to execute amendments as may be necessary for the continuing compliance with applicable law, as additional regulations are promulgated or become final and effective. Should either party reasonably conclude that any portion of the Agreement is or may be in violation of current law or subsequent enactments by federal, state, or local authorities, or if any such change or proposed change would materially increase the cost of Provider’s performance hereunder, the parties agree to negotiate in good faith on written modifications to the Agreement as may be necessary to establish compliance with such authorities or to reflect applicable changes.

**15.18 Equitable Relief.** Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under **Section 9** or, in the case of Customer, **Section 3.2**, **Section 4.3** or **Section 6.1**, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

## **16. Definitions.**

“**Access Credentials**” means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Hosted Services.

“**Affiliate**” means a legal entity that directly or indirectly controls, is controlled by, or is under common control with the party. For purposes of this definition only, “control” means direct or indirect ownership of more than fifty percent (50%) of the shares of the subject corporation entitled to vote in the election of directors (or, in the case of an entity that is not a corporation, for the election of the corresponding managing authority).

“**Agreement**” means the Order Form and these Terms.

“**Authorized User**” means a Representative of Customer who (a) has a legitimate business reason for accessing the Services and Provider Materials, (b) has been informed of the confidential nature of the Services and Provider Materials, and (c) has agreed to be bound by confidentiality and restricted use obligations at least as restrictive as those set forth in the Agreement, including without limitation the obligations in **Sections 3.2** and **9**.

“**Customer Data**” means information, data, and other content, in any form or medium, that originates from Customer or an Authorized User and is collected, downloaded, or otherwise received, directly or indirectly, from Customer or an Authorized User by or through the Services.

“**Customer Failure**” shall have the meaning assigned to it in **Section 4.2** below.

“**Customer Systems**” means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services.

“**Documentation**” means the then-current version of any manuals, instructions, or user guides that the Provider provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of the Services or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

“**Effective Date**” shall have the meaning assigned to it in the Order Form.

“**Fees**” means the Subscription Fee and all other fees payable by Customer to Provider hereunder.

“**Go Live Date**” shall mean the date on which Provider notifies Customer’s service manager that the Software set forth on the initial Order Form is available for Customer’s access and use.

“**Harmful Code**” means any software, hardware, or other technology, device, or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent Customer or any Authorized User from accessing or using the Services or Provider Systems as intended by the Agreement. Harmful Code does not include any Provider Disabling Device.

“**Hosted Services**” shall have the meaning assigned to it in **Section 5.1** below.

“**Initial Term**” shall have the meaning assigned to it in the Order Form.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

“**Losses**” means any and all losses, damages, liabilities, deficiencies, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Order Form**” means the order form to which Terms are attached or into which these Terms are incorporated.

“**Permitted Use**” means any use of the Services by an Authorized User for the benefit of Customer solely in or for Customer's internal business purposes in connection with the “Permitted Use” stated on the Order Form.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

“**Process**” means to take any action or perform any operation or set of operations that the Services are capable of taking or performing on any data, information or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or block, erase, or destroy. “**Processing**” and “**Processed**” have correlative meanings.

“**Provider Data**” means all information, data, and content that is provided or otherwise made available by Provider for Customer to access or use in connection with the Services.

“**Provider Disabling Device**” means any software, hardware, or other technology, device, or means (including any back door, time bomb, time out, drop dead device, software routine, or other disabling device) used by Provider or its designee to disable Customer's or any Authorized User's access to or use of the Services automatically with the passage of time or under the positive control of Provider or its designee.

“**Provider Materials**” means the Software, Documentation, Provider Data, and Provider Systems, and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Provider or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Provider Systems. For the avoidance of doubt, Provider Materials do not include Customer Data.

“**Provider Personnel**” means all individuals involved in the performance of Services as employees, agents, or independent contractors of Provider or any Subcontractor.

“**Provider Systems**” means the information technology infrastructure used by or on behalf of Provider in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Provider or through the use of third-party services.

“**Renewal Term**” shall have the meaning assigned to it in **Section 10.1** below.

“**Representatives**” means, with respect to a party, that party's employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors.

“**Services**” shall mean the services that Provider agrees to perform pursuant to the Agreement, including without limitation (a) providing to Customer and its Authorized Users access to the Software, (b) the Hosted Services, (c) implementation, training, or support services described in the Agreement, and (d) services performed pursuant to a Statement of Work hereunder.

“**Software**” means Provider’s software application(s) identified in the Order Form and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Provider provides remote access to and use of as part of the Services.

“**Statement of Work**” shall have the meaning assigned to it in **Section 2.7** below.

“**Subcontractor**” shall have the meaning assigned to it in **Section 2.5** below.

“**Subscription Fee**” shall mean the subscription fee set forth on the Order Form.

“**Term**” shall have the meaning assigned to it in **Section 10.1** below.

“**Territory**” means the geographic territory identified in the applicable Order Form.

“**Third Party Materials**” means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Provider or Customer.