

VIRTI MASTER TERMS AND CONDITIONS

THESE MASTER TERMS AND CONDITIONS (THE “**Agreement**”) GOVERN YOUR ACCESS TO AND USE OF THE ONLINE PLATFORM AND INTERACTIVE TRAINING RESOURCES (THE “**Service**”) PROVIDED BY VIRTI INC., A DELAWARE CORPORATION WITH OFFICES AT 700 W St. Clair Ave #416, Cleveland, Ohio 44113, US (“**Provider**,” “**we**,” “**us**,” or “**our**”).

BY CLICKING “SIGN UP,” “SIGN IN,” OR OTHERWISE ACCESSING OR USING THE SERVICE, YOU (“**Customer**,” “**you**,” or “**your**”) AGREE TO THIS AGREEMENT AND OUR PRIVACY POLICY. IF YOU DO NOT AGREE, YOU MAY NOT USE THE SERVICE.

FOR CUSTOMERS ENTERING INTO A SEPARATE WRITTEN ORDER FORM WITH PROVIDER FOR USE OF THE SERVICE (“ORDER FORM CUSTOMERS”), THIS AGREEMENT ALSO APPLIES AND IS INCORPORATED INTO YOUR ORDER FORM. IN SUCH CASES, “CUSTOMER” ALSO REFERS TO THE ENTITY IDENTIFIED ON THE APPLICABLE ORDER FORM. IN THE EVENT OF A CONFLICT BETWEEN THESE MASTER TERMS AND CONDITIONS AND THE TERMS OF AN ORDER FORM, THE TERMS OF THE ORDER FORM SHALL PREVAIL FOR ORDER FORM CUSTOMERS.

1. TERMS OF AGREEMENT. These Master Terms and Conditions (the “**MTCs**”) govern the access to and use of the System (as defined herein) and the services of Provider by the Customer (as defined below). Customer and Provider are each referred to as a “**Party**” and collectively as the “**Parties**.” For Customers who access the Service via an online sign-up or by otherwise clicking to accept these MTCs (“**Online Customers**”), these MTCs constitute the entire, full, and complete agreement (collectively, the “**Agreement**”) between such Online Customer (“**Customer**”) and Provider. For Customers who enter into a separate, mutually signed Order Form with Provider (“**Order Form Customers**”), these MTCs, along with the applicable Order Form (which may include specific terms and pricing incorporated by reference), collectively constitute the “**Agreement**” between such Order Form Customer (“**Customer**”) and Provider. This Agreement contains the entire understanding of the Parties relating to the subject matter, and supersedes all prior or contemporaneous oral or written agreements, understandings, communications, proposals, representations and warranties regarding the subject matter. In the event of a conflict between these Master Terms and Conditions and the terms of an Order Form, the terms of the Order Form shall prevail. Any terms or conditions in Customer’s purchase order or any other related documents submitted by or on behalf of Customer to Provider do not form part of this Agreement and are void, unless otherwise expressly agreed in writing and signed by the Parties.

2. DEFINITIONS. In addition to terms that are defined elsewhere in this Agreement, the following terms will have the meanings indicated below:

2.1 “**Affiliate**” means, with respect to any Party, an entity that directly or indirectly is controlled by, controls, or is under common control with such Party. As used in the preceding sentence, “control” means (a) the ownership of 50% or more of the voting securities or other voting interests of any entity, or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract, or otherwise.

2.2 “**Authorized User**” means an employee, contractor, or (in the case of an educational institution) enrolled student of Customer or Customer’s Affiliates who is authorized by Customer to access or use the System in connection with the conduct of Customer’s business as permitted hereunder and for whom Customer has paid any applicable Fee.

2.3 “**Customer Administrator**” means an Authorized User holding a position with Customer or Customer’s Affiliate that is designated as management or supervisory.

2.4 “**Customer Content**” means any content or information in the form provided or created by Customer that is accessed or stored in the System, but does not include any Derivative Content or System Content.

2.5 “**Derivative Content**” means content based on the System Content, including modifications, improvements, enhancements or additions to the System Content provided by Customer, and including all derivative works as defined under Section 101 of the U.S. Copyright Act, whether or not subject to copyright protection, but does not include any portion of the System Content incorporated or embedded in such Derivative Content.

2.6 “**Documentation**” means the official user documentation for the System provided by Provider from time to time.

2.7 “**Fee**” means the amount that Customer shall pay to Provider as consideration for access to or use of the System as specified in the Order Form and any adjustments for additional Authorized Users.

2.8 “**Order Form**” means a Provider ordering document (which could be online or in electronic form) pursuant to which Customer applies for access to the System, and which is entered into between Provider and Customer, including any addenda and documents incorporated by referenced therein.

2.9 “**Professional Advice**” means advice of a medical doctor, attorney, certified public accountant, actuary, or other licensed professional adviser.

2.10 “**Protected Information**” means any Customer Content or Customer Data that (a) identifies a specific natural person, (b) contains sensitive payment card, account, password or financial information, or (c) is otherwise protected by applicable privacy law or regulation.

2.11 “**System**” means the online platform providing interactive training resources, including, but not limited to, Virti Content Creation, Remote Training and Analytics Engine products and any other products made available from time to time to Authorized Users on the System.

2.12 “**System Content**” means the content, data, information, analysis, code and output of the System, including without limitation Q&A overlays, hotspots, information boxes, navigation controls and virtual humans generated by the System. The term System Content does not include Customer Content.

2.13 “**Trade Secret**” means business or technical information that derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering.

3. ACCESS TO THE SYSTEM.

3.1 **License to System.** Subject to the terms and conditions of this Agreement, Provider grants to Customer during the Term (as defined in Section 8.1) a limited, non-exclusive and non-transferable license to access and use, within Customer’s organization only, the System solely for Customer’s business purposes in accordance with this Agreement (the “**License**”). Customer agrees not to use, or permit any Affiliate or Authorized User to use, the System for any purposes beyond the scope of the License. Without limiting the foregoing, Customer shall not, nor permit Customer’s Authorized Users, Affiliates or others to: (a) resell, sublicense, lease, time-share or otherwise make the System available to any third party, including for third-party training, commercial time-sharing, or application service provider or service bureau use; (b) transfer or copy the System or any component thereof; (c) modify, adapt or make derivative works of the System, or reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms of Provider’s software used in the provision of services (provided that the foregoing shall not be construed to prohibit Customer from configuring the System to the extent permitted by the System’s standard user interface); (d) remove, obscure, or alter Provider’s proprietary notices, trademarks, or other proprietary rights notices affixed to or contained in the System or the System Content; (e) use the System or System Content in contravention of any federal, state, local, foreign or other applicable law, or rules or regulations of regulatory or administrative organizations; (f) introduce into the System any virus or other code or routine intended to disrupt or damage the System or its content, or collect information about the System or its users; (g) use the System to send or store infringing or unlawful material; (h) access the System for the purpose of building a competitive product or service or copying its features, content or user interface, including by screen scraping; or (i) access or use the System by means of any interfacing program, script, automated program, electronic agent or “bot,” except as authorized in writing by Provider. No rights are granted to the System or System Content except as explicitly set forth in this Agreement, and all such other rights are expressly reserved by Provider.

3.2 **System Content.** Customer is permitted to use the System Content and Derivative Content for Customer’s own internal business purposes in accordance with this Agreement and the License. Customer may disclose information from System Content and Derivative Content to third parties in connection with such business activities; provided that Customer shall not, and shall not permit Customer’s Authorized Users, Affiliates or others to: (i) disclose all or significant portions of the System Content in the form provided by the System; or (ii) use System Content for the purpose of building a competitive product or service.

3.3 **Restrictions on Use.** Customer shall not access, store, distribute or transmit any material that: (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (b) is discriminatory based on race, gender, color, religious belief, sexual orientation or disability; or (c) is otherwise illegal or causes damage or injury to any person or property. Provider reserves the right to disable access and remove any material that breaches these requirements.

3.4 **Authorized Users.** Access to the System is limited to the number of Authorized Users specified in the Order Form. Provider will issue a unique user ID and password to each Authorized User to enable them to use the System. Each user ID and password is confidential and is intended for use only by the Authorized User to whom it is assigned. An Authorized User’s account may not be used by more than one individual, but Customer may reassign, as set out on an applicable Order Form, a user permission in its entirety to another employee or contractor of Customer or Customer’s Affiliates (a “**Reassigned User**”). If more users than the number of Authorized Users listed on the Order Form (including Reassigned Users) use the System, Customer shall

pay for additional users at the rate specified in the Order Form (or if not specified then at Provider's standard rates). Customer will instruct Customer's Authorized Users to safeguard user ID and password information relating to the System and not to share such information with others, and will notify Provider immediately if any such user ID or password information has been compromised. Customer is responsible for all activities and transactions conducted under the accounts of Customer's Authorized Users, and for the compliance of Customer's Authorized Users with this Agreement. Any user ID may be suspended and/or deactivated and access to and use of the System suspended by Provider in the event of any breach of security, provided that Provider shall use commercially reasonable measures to attempt to provide prompt notification of such action.

3.5 Data Collection. Provider will collect the following personal data of Customer's staff and Authorized Users: full name, email, phone number, affiliation with Customer, professional registration (if applicable), area of specialization, device type, location code, UUID, browser details, and details of any interaction between an Authorized User and Provider, Customer or the System ("Customer Data"). Customer Data is supplied by Customer or Authorized User or collected by Provider during Customer's or the Authorized User's sign up process or during use of the System. Customer Data shall also include details of each Authorized User's test scores and System usage when the Authorized User accesses training materials on the System.

3.6 Equipment and Internet Access. Customer will furnish, at Customer's expense, any computer, networking, telecommunications and other equipment, services and communication links necessary for Customer's Authorized Users to access the Internet and connect to the System. Provider will not be responsible for equipment or network outages or problems relating to Customer's premises or infrastructure. In no event will Provider be responsible for the compatibility of the System with any software, service, hardware or equipment that is not provided by Provider or that does not meet specification prescribed by Provider.

3.7 Access Models. The Service may be accessed under two commercial models: Order Form: Where access is arranged through a mutually signed Order Form with agreed commercial terms. Subscription: Where access is purchased directly via the website on a self-service subscription basis. The applicable terms in Sections 3.8 (Order Form Terms) and 3.9 (Subscription Terms) apply depending on the method of access.

3.8 Order Form Terms. Where the Service is accessed via an executed Order Form, the Fees, payment terms, and invoicing arrangements are as set out in that Order Form. Unless otherwise specified, all Fees are payable within 30 days of the invoice date. Provider may suspend access to the Service if any undisputed amounts remain unpaid after the due date. Interest may be charged on overdue amounts at a rate of 1% per month or the maximum rate permitted by law, whichever is lower.

3.9 Subscription Terms. Where the Service is accessed via an online self-service subscription, your use is billed on a subscription basis—monthly or annually in advance, depending on the plan you select. All payments are non-refundable. Unless you cancel your subscription before the end of the current billing period as described below, your subscription will automatically renew for a subsequent period of the same duration, and your payment method will be charged automatically at the start of each new billing cycle. If you cancel, your subscription will remain active until the end of the current billing period, and no further charges will be made. Your payment method will be charged automatically at the start of each billing cycle. You authorize us and our third-party payment processor to process these charges. You can update your payment information or cancel your subscription at any time through your account settings. If a payment fails, we will attempt to retry the charge multiple times. If payment is not completed, access to the Service may be suspended. If the issue is unresolved, we reserve the right to delete the associated account and any stored data permanently. We may update our pricing from time to time. You will receive advance notice of any changes before they apply in your next billing cycle. All Fees are exclusive of applicable taxes, which are your responsibility to pay.

4. TRAINING AND SUPPORT.

4.1 Training. Provider will provide training to Customer Administrators during the first thirty (30) days following the effective date of this Agreement. The training shall be provided through online and live and pre-recorded content.

4.2 Support. Provider will provide reasonable support in the creation of training related Customer Content, as detailed on the Order Form. Provider will provide a telephone number and/or email address to enable reporting of technical and operational issues with the System during the hours of 9:00 AM and 5:00 PM (Central Time), Monday through Friday, excluding days designated as holidays observed by Provider. Customer may also initiate a helpdesk ticket any time by emailing support@virti.com. Provider will use commercially reasonable efforts to respond to all helpdesk tickets within one (1) business day.

4.3 Updates and Modifications. During the Term, Provider will provide Customer with access to upgrades and updates to the System that have been generally rolled out to its other similar users of the System. Provider may also from time to time modify parts of the System, including the terms of use, procedures and protocols related thereto, by giving notice to Customer (either online via the System or via email or other method permitted in this Agreement). If any such upgrade, update or modification affects Customer in a material and adverse manner, Customer, and as Customer's sole remedy, may serve Provider,

within thirty (30) days of receiving such notice, with written notice to terminate this Agreement. Provider will, at Customer's request continue to provide access to the System for up to ninety (90) days following such termination notice in order to permit an orderly wind down, provided that Customer continues to pay all applicable Fees and complies with all other applicable requirements under this Agreement during the wind down period. Provider will refund any unearned, prepaid Fees promptly following completion of wind down. If Customer does not exercise Customer's termination right within the specified time, Customer will be deemed to have accepted the upgrade, update or modification, including any modified term, procedure or protocol.

4.4 **Online Access.** Provider will use commercially reasonable efforts to cause the System to be accessible to Authorized Users 99.5% of the time, measured monthly and excluding scheduled maintenance, required repairs and inaccessibility due to any circumstance described in Section 12.5. If Customer requests maintenance, any uptime or downtime calculation will exclude periods affected by such maintenance. In the event of any failure of Customer to have access to the System 99.5% of the time during any month, Customer shall be entitled to a credit for each period of inaccessibility equaling 30 minutes in any month ("**Downtime Period**") equal to 1% of the fees payable for such month ("**Service Credit**"). A Downtime Period shall begin to accrue as soon as Customer (with notice to Provider) recognizes that Downtime is taking place and shall continue until the accessibility of the System is restored. In order to receive the Service Credit, Customer must notify Provider in writing within ten (10) business days from the time of any Downtime Period and specify the length of such downtime. Failure to provide such notice will forfeit the right to receive Service Credit. Service Credits will be applied toward the Fees for the next renewal period and cumulatively may not exceed 20% of the Fees for that period. The foregoing Service Credits shall be Customer's sole and exclusive remedy with respect to inaccessibility of the System.

5. PROPRIETARY RIGHTS.

5.1 **Customer Content.** Customer shall retain ownership in Customer Content as input into the System. Customer Content will be available to Customer via the System during the Term. Customer is solely responsible for any editorial control associated with Customer Content and is solely responsible for ensuring that Customer Content is accurate, suitable for use and distribution, and does not infringe the intellectual property rights of third-parties. Customer represents and warrants that Customer has all rights, licenses, consents and releases necessary to provide all Customer Content and other content, materials or data that Customer provides to Provider for the uses contemplated hereunder. As judged solely by Provider's reasonable discretion, if any Customer Content does not comply with terms of this Agreement or is otherwise inappropriate, Provider may remove such Customer Content from the System or otherwise suspend Customer's access to such Customer Content.

5.2 **Licensed Customer Content.** If Customer and Provider agree in writing in advance in an Order Form or other record (a "**License Authorization**"), Customer grants Provider a perpetual (except as otherwise provided in the License Authorization), irrevocable, non-exclusive right to use, disclose and distribute the specified Customer Content in connection with Provider's operations and the operation of the System, including the right to display such Customer Content to other users of the System and to redistribute and create derivative works of such Customer Content (the "**Licensed Customer Content**"). Customer shall be entitled to receive such percentage of the charges paid by other users of the System to access the Licensed Customer Content as the Parties shall agree in the License Authorization (the "**Customer Content Revenue Share**"). In consideration for the license, Provider shall pay to Customer within thirty (30) days after each anniversary of the effective date of this Agreement the Customer Created Content Revenue collected by Provider in the year ending on such anniversary. Such payment shall be accompanied by a Customer Content Revenue account summary. Customer acknowledges that Customer's name or other identifying information will be considered part of the Licensed Customer Content and usable by Provider to publicly identify Customer as the source of such Licensed Customer Content.

5.3 **System Content.** As between Customer and Provider, all System Content and Derivative Content, including all database, copyright, derivative works and other intellectual property rights in such System Content and Derivative Content, shall be the property of Provider. Customer acknowledges that System Content and Derivative Content is proprietary to Provider, and Customer agrees not to use or disclose it except as expressly permitted in this Agreement.

5.4 **Customer Data.** Customer shall retain ownership of Customer Data, and hereby acknowledges Provider's right to collect the Customer Data. During the Term, Company hereby grants to Provider a non-exclusive, worldwide, royalty-free right to use, copy, process store, transmit, distribute, perform and display (collectively, "Use") the Customer Data for the purpose of and to the extent necessary to perform its obligations hereunder and to comply with applicable laws. During and after the Term hereof, Provider shall have the right to, and Customer hereby grants the irrevocable, non-exclusive, worldwide, royalty-free right to, Use and otherwise exploit the Customer Data in aggregated, anonymous and/or deidentified form ("**Anonymized Data**") for Provider's legitimate business purposes, including to analyze the use and performance of various aspects of the System and related technologies, to improve and enhance the System, and for other development, diagnostic, testing and corrective purposes in connection with the System. For clarity, nothing in this Section gives Provider the right to disclose the identity of Customer or any individual user as the source of Anonymized Data.

5.5 **Suggestions.** Customer grants Provider a royalty-free, fully paid-up, non-exclusive, perpetual, irrevocable, worldwide, transferable, sublicensable license to copy, modify, distribute and otherwise use any suggestions, enhancement requests, recommendations or other feedback that is provided by Customer or Customer's Authorized Users relating to the System or its operation.

5.6 **Assignment and Further Assurances.** To the extent that a Party retains rights in any data, materials, intellectual property or other items in contravention of the allocation of ownership set forth in this Section 5, such Party (the "**Assigning Party**") agrees to and hereby grants, assigns and conveys to the other Party (the "**Owning Party**") the Assigning Party's right, title and interest, if any, in such items and in all patents, copyrights, moral rights and other intellectual property rights associated therewith. Each Party agrees to cooperate fully with the other for the purpose of securing, reserving and protecting a Party's ownership as set forth in this Section 5, including executing any documents requested by an Owning Party. Each Party hereby acknowledges that nothing in this Agreement, including the allocation of ownership in this Section 5 shall affect any rights to use data that a Party has lawfully obtained from the owner of such data independent of this Agreement.

5.7 **Reservation of Rights.** Except as otherwise expressly provided herein, nothing in this Agreement shall be deemed to grant, directly or by implication, estoppel or otherwise, any right or license with respect to any technology or other intellectual property rights, and each Party retains all right, title and interest in and to its respective technologies and other intellectual property rights.

6. CONFIDENTIALITY

6.1 **Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential information disclosed by a Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Provider's Confidential Information shall include the System and System Content; and the Confidential Information of each Party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, and business processes disclosed by such Party. A Receiving Party shall not reverse engineer, disassemble or decompile any samples, prototypes, software or other tangible objects provided by the Disclosing Party other than with the Disclosing Party's express written authorization. Confidential Information shall not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party without use of or reliance upon the Confidential Information of the Disclosing Party.

6.2 **Protection of Confidential Information.** A Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but in no event less than reasonable care) (a) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (b) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who are bound by confidentiality obligations no less stringent than those herein. Neither Party shall disclose the terms of this Agreement nor any Order Form to any third party (other than in confidence to its Affiliates and their legal counsel, advisors and accountants) without the other Party's prior written consent. The obligation of confidentiality set forth in this Section 6.2 shall survive for a period of five (5) years beyond the termination or expiration of this Agreement, *provided* that the confidentiality obligation of this Section 6.2 as applied to Trade Secrets shall survive indefinitely until such Trade Secret is no longer a Trade Secret under applicable law.

6.3 **Exceptions and Compelled Disclosure.** Nothing in this Agreement shall prohibit a Receiving Party from reporting a suspected violation of law to any governmental or regulatory agency and cooperating with such agency; from testifying truthfully under oath pursuant to subpoena or other legal process; or from making disclosures that are otherwise protected under applicable law or regulation. A Receiving Party is authorized to comply with any subpoena or similar order that may seek Confidential Information, provided that, except to the extent that the Receiving Party is prohibited by law, the Receiving Party shall (a) notify the Disclosing Party promptly upon receipt of any such subpoena or similar order (and in any event prior to production of any Confidential Information), and (b) provide reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access. In any case, the Receiving Party will disclose only that portion of the Disclosing Party's Confidential Information which, based on the reasonable advice of counsel, is legally required to be disclosed and will otherwise exercise all reasonable efforts to obtain reliable assurance that Disclosing Party's Confidential Information will be accorded confidential treatment.

6.4 **Publicity.** Notwithstanding the foregoing provisions of this Section 6, Provider shall have the right to identify Customer (by name and logo) publicly as a customer of Provider and user of the System for promotional purposes. Customer further agrees to participate in other Provider marketing efforts, including, case studies, reference calls, and press testimonials unless otherwise provided in the Order Form.

7. DATA PROTECTION

7.1 **Data Security.** Provider shall, with respect to Customer Data, maintain data management and security standards and practices designed to prevent the unauthorized access to or use or loss of any Customer Data and to protect against anticipated threats or hazards to the security of the Customer Data. Provider will take commercially reasonable precautions (including backup, archive and business continuity measures) to prevent the loss of or alteration to Customer Data and Customer Content stored in the System.

7.2 **Subprocessing.** Provider may subcontract for the storage or processing of Customer Data with a subcontractor or Affiliate (a “**Subprocessor**”). If the Subprocessor has access to Protected Information: (a) Provider shall carry out adequate due diligence before the Subprocessor first processes Protected Information, to ensure that the Subprocessor is capable of providing the level of protection for Protected Information required by the Agreement; and (b) Provider shall enter into a written contract with such Subprocessor requiring the Subprocessor to comply with obligations no less onerous than Provider’s obligations under this Agreement, including appropriate contractual provisions in accordance with relevant Data Protection Laws. Such subcontracting under this Section shall not release Provider from its responsibility for its obligations under this Agreement. Provider shall be responsible for the work and activities of all Subprocessors.

7.3 **Safeguards.** To the extent Provider has access to or processes Protected Information, the following shall apply:

(a) **Reasonable Security Measures.** Provider will implement and maintain commercially reasonable information safeguards consistent with industry standards, and applicable U.S. federal and state laws governing the privacy and protection of Protected Information (“**Data Protection Laws**”), to protect the Protected Information in its possession or control, including:

(i) processing Protected Information only as is reasonable in connection with the services under this Agreement and only for the purposes contemplated herein;

(ii) taking appropriate technical and organizational measures against unauthorized or unlawful processing of Protected Information, including the engagement of reliable staff and the implementation of appropriate security measures;

(iii) promptly following receipt, passing on to Customer any data subject requests regarding such Protected Information, and reasonably cooperating with Customer to enable Customer to comply with Customer’s obligations under applicable Data Protection Laws, including assisting in the handling of data subject requests for access to or deletion of such Protected Information within applicable statutory time limits;

(iv) making available to Customer, at Customer’s reasonable request, available information necessary to demonstrate compliance with this Agreement, including responding to security questionnaires relating to the processing of Protected Information (provided that all such disclosed information shall be considered Confidential Information of Provider); and

(v) appropriate use of encryption for Protected Information transmitted by Provider via the Internet.

(b) **Security Breach.** If Provider learns of any actual misuse, compromise or unauthorized access or acquisition of Protected Information in the possession or control of Provider or its Subprocessor (a “**Security Breach**”), Provider will take appropriate measures to promptly stop and remedy the Security Breach, promptly notify Customer, cooperate with Customer in limiting and addressing such Security Breach, and take all actions as may be required under applicable Data Protection Laws. The Parties will mutually agree upon the notification to be provided to affected parties as a result of a Security Breach, provided that nothing shall prevent a party from complying with any of its obligations under applicable Data Protection Law or insurance policy.

8. TERM & TERMINATION.

8.1 **Term and Renewal of Order Form Agreements.** Where Customer’s access to the Service is governed by an Order Form, this Agreement shall be effective as of the start date specified in the Order Form, or if no such date is specified, the first date that Customer receives access to the System. The initial term of the Agreement shall be as set out in the Order Form (the

"**Initial Order Form Term**"). Upon expiration of the Initial Order Form Term, the Agreement shall automatically renew for additional successive terms of one year each (each a "**Renewal Order Form Term**"), unless either Party gives the other written notice of non-renewal at least ninety (90) days prior to the end of the then-current Initial Order Form Term or any Renewal Order Form Term. The Initial Order Form Term and any Renewal Order Form Terms are collectively referred to as the "**Order Form Term**." A notice of non-renewal by either Party will be effective only at the end of the then-current Order Form Term, and the Customer remains responsible for all Fees through the completion of that Order Form Term.

8.2 **Subscription Term, Renewal, and Cancellation.** The term, renewal, and cancellation of Services accessed via an online self-service subscription are governed by Section 3.9 (Subscription Terms). For the avoidance of doubt, the provisions of Section 8.1 do not apply to such subscriptions.

8.3 **Termination for Material Breach.** Either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if the other Party materially breaches any provision of this Agreement and such breach remains uncured for thirty (30) days after the breaching Party receives written notice thereof. If Customer terminates this Agreement due to Provider's uncured material breach, Provider will refund to Customer any unearned, prepaid Fees applicable to the remainder of the terminated term. If Provider terminates this Agreement due to Customer's uncured material breach, all Fees for the remainder of the then-current term (whether an Order Form Term or a subscription billing period) shall become immediately due and payable, and no prepaid Fees will be refunded.

8.4 **Effect of Termination.** Upon expiration or termination of this Agreement, the rights and License granted under this Agreement shall immediately cease, and Customer and Customer's Authorized Users will immediately cease use of the System and return or destroy all Provider's Confidential Information. Provider will return or destroy all Customer's Confidential Information, except to the extent retention is necessary for compliance purposes. Customer's access to Customer Content via the System will terminate as of any such termination. Upon written notice by Customer no more than ten (10) days following the expiration or termination of this Agreement and payment of all outstanding amounts due under this Agreement, Customer may download Customer Data and Customer Content from the System. Provider reserves the right in its discretion to delete any Customer Content and Customer Data beginning 30 days after termination of this Agreement. Sections 5, 8.2, 9, 11, 12, and 13 shall survive termination or expiration of this Agreement.

9. LIMITED WARRANTY AND DISCLAIMERS.

9.1 **Limited Warranty.** Provider hereby represents and warrants to Customer that during the Term the System will conform to applicable Documentation (excluding those circumstances mentioned in Section 12.5), contingent upon Customer's acceptance of all corrections, enhancements, updates and new releases provided by Provider to Customer and the absence of a breach of this Agreement, the malicious act of a third party, a modification of the services requested by Customer, unauthorized use, incorrect use, damage, or abuse to the System. THE EXCLUSIVE REMEDY FOR ANY BREACH OF THE FOREGOING WARRANTY SHALL BE THAT PROVIDER, IN RESPONSE TO WRITTEN NOTICE OF A WARRANTY CLAIM, SHALL, AT ITS OWN OPTION AND OWN EXPENSE, EITHER: (A) CORRECT THE NON-CONFORMITY OF THE SYSTEM TO THE ABOVE STANDARD; OR (B) TERMINATE THIS AGREEMENT AND REFUND TO CUSTOMER ANY UNEARNED, PREPAID FEES.

9.2 **Third Party Equipment.** To the extent that Provider provides Customer with any equipment, Provider will pass on to Customer the benefit of any manufacturer's warranty. If, pursuant to the terms of those warranties, the rights thereunder are not assignable, Provider agrees, to the extent possible, to assert its rights under those warranties, representations, and indemnities on behalf of Customer.

9.3 **All Other Warranties Excluded.** TO THE MAXIMUM EXTENT ALLOWED BY LAW THE FOREGOING WARRANTIES IN THIS SECTION 9 AND SECTION 10 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FREEDOM FROM CONTAMINATION BY COMPUTER VIRUSES, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS; NOR ARE THERE ANY WARRANTIES CREATED BY A COURSE OF DEALING, COURSE OF PERFORMANCE OR TRADE USAGE. PROVIDER EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT ACCESS OR USE OF THE SYSTEM WILL BE ERROR-FREE, SECURE OR UNINTERRUPTED, OR THAT THE SYSTEM DATA WILL BE ACCURATE OR TIMELY. THE DISCLAIMER IN THIS SECTION 9.3 SHALL NOT LIMIT CUSTOMER'S RIGHT TO RECEIVE SERVICE CREDIT AS PROVIDED IN SECTION 4.4.

10. COMPLIANCE OBLIGATIONS

10.1 **No Exclusion from Federal Programs.** Provider represents and warrants to Customer that neither Provider nor any of its employees, agents or representatives: (a) has engaged in any activities prohibited by the False Claims Laws; (bi) has, in the

past ten (10) years, been debarred, excluded or otherwise made ineligible by any Federal governmental agency from participating in Federally reimbursed health care programs; (c) has, in the past ten (10) years, been sanctioned or convicted by any Federal governmental agency; (d) is listed in any Federal governmental agency's list of sanctioned, debarred, excluded or ineligible contractors; or (e) is listed on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Denied Persons List, Unverified List and Entity List. Provider hereby agrees that (A) it shall not engage in any activities prohibited by the False Claims Laws; and (B) Provider shall notify Customer within five (5) business days of any conviction, citation, judgment or settlement affecting Provider's covenants, representations or warranties contained in this Section. Provider agrees that any debarment, exclusion, ineligibility, sanction or listing as described in clauses (b), (c), (d) or (e) above shall constitute a material breach of this Agreement and that Customer shall have the right to immediately terminate this Agreement if and to the extent required or permitted by the applicable legal requirements.

10.2 Non-Discrimination. Provider represents and warrants to Customer that it is now in compliance with and agrees that at all times during the term of this Agreement Provider shall be and remain in compliance with all applicable nondiscrimination and equal employment opportunity laws, rules and regulations and, in particular, those requiring that Provider will not discriminate against any employee or applicant for employment on the basis of race, color, age (over 40), marital status, religion, sex, actual or perceived sexual orientation, national origin, ancestry, medical condition (cancer related), physical or mental handicap or Vietnam era veteran status, including Executive Order No. 11246 of September 24, 1965 (the "**Executive Order**"), and of the rules, regulations and relevant orders of the United States Secretary of Labor (the "**Labor Secretary**"). Provider further agrees that in the event that Provider is deemed to be a covered federal subcontractor of Customer during the term of this Agreement, Provider shall comply with the following requirements:

(a) Provider shall comply with all provisions of Executive Order No. 11246 of September 24, 1965 (the "**Executive Order**"), and of the rules, regulations and relevant orders of the United States Secretary of Labor (the "**Labor Secretary**"), and shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, age (over 40), marital status, religion, sex, actual or perceived sexual orientation, national origin, ancestry, medical condition (cancer related), physical or mental handicap or Vietnam era veteran status. Such actions shall include, but are not limited to, the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeships. Provider shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) Provider shall, in all solicitations or advertisements for employees placed by or on behalf of Provider, state that all qualified applicants will receive consideration for employment without regard to race, color, age (over 40), marital status, religion, sex, actual or perceived sexual orientation, national origin, ancestry, medical condition (cancer related), physical or mental handicap or Vietnam era veteran status.

(c) Provider shall send to each labor union or representative of workers with which Provider has a collective bargaining agreement or other contract or understanding, a notice, advising the labor union or workers' representative of Provider's commitments under Section 202 of the Executive Order, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) Provider shall furnish all information and reports required by the Executive Order, and by the rules, regulations and orders of the Labor Secretary, or pursuant thereto, and will permit access to Provider's books, records and documents by Customer and by the Labor Secretary or their authorized agents for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(e) In the event of Provider's noncompliance with the nondiscrimination clauses of these Master Terms and Conditions or with any of such rules, regulations or orders, Customer shall have the right to cancel, terminate or suspend this Agreement in whole or in part and Provider may be declared ineligible for further government contracts in accordance with procedures authorized in the Executive Order, and such other sanctions may be imposed and remedies invoked as provided by the Executive Order or by rule, regulation or order of the Labor Secretary, or as otherwise provided by applicable laws, rules and regulations.

(f) Provider shall include the provisions of Sections 17(a) through (f) in every subcontract or purchase order applicable to this Agreement unless exempted by rules, regulations or orders of the Labor Secretary issued pursuant to Section 204 of the Executive Order, so that such provisions will be binding upon each subcontractor or vendor. Provider shall take such action with respect to any subcontract or purchase order as the Labor Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, in the event that Provider becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Provider may request the United States to enter into such litigation to protect the interests of the United States.

10.3 **Social Security Act.** In connection with the subject matter of this Agreement, Provider shall maintain and make available all applicable books and records in order to assure that Customer will be able to meet all requirements for participation in and payment associated with public or private third party payment programs, including, but not limited to, matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended, and any regulations promulgated pursuant thereto (collectively, the “Act”). Provider shall comply with the following requirements, which are set forth in Section 1861(v)(1)(I) or the Act and 42 C.F.R. Section 420.300 et seq.:

(a) Until the expiration of four (4) years after the furnishing of all services pursuant to this Agreement, Provider shall make available, upon written request of the Secretary of the United States Department of Health and Human Services (the “**Secretary**”), or upon request of the Comptroller General of the United States (the “**Comptroller General**”), or any of their duly authorized representatives, this Agreement, and books, documents and records of Provider (including all writings, recordings, transcriptions and tapes of any description) that are necessary to certify the nature and extent of such costs.

(b) If Provider carries out any of the duties of this Agreement through a subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, with an organization related to the subcontractor (as that term is defined in 42 C.F.R. Section 413.302), such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or upon request of the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

(c) If Provider is required to disclose books, documents or records pursuant to Section 1861(v)(1)(I) of the Act and 42 C.F.R. Section 420.300 et seq., Provider shall promptly notify Customer of the nature and scope of such request and Provider’s response thereto, and Provider shall make copies of all such books, documents or records disclosed available to Customer.

10.4 **Agreement to Secure.** Provider agrees to respect and maintain (and shall cause all its employees, contractors, and agents to respect and maintain) the confidentiality of all personal health and other personal information concerning all patients, employees, and other individuals. The parties intend to comply with applicable provisions of the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, including the amendments and related laws of the Health Information Technology for Economic and Clinical Health Act, and regulations promulgated thereunder, California laws relating to the privacy of patient and individual information and other applicable laws, rules and regulations. To the extent that Provider shall have access to protected health information, Provider and Customer shall enter into Customer’s form of Business Associate Agreement.

11. INDEMNIFICATION.

11.1 **Provider Indemnification.** Provider shall indemnify, defend and hold harmless Customer and Customer’s Affiliates and their directors, officers, employees and agents with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys’ fees, to the extent that it is based upon any third party claim (an “**Infringement Claim**”) that the System infringes any copyright, patent, trademark, Trade Secret or other intellectual property right of any third party; provided, however, that Provider shall have no obligation pursuant to the foregoing indemnification provision to the extent that any claim is based on or related to (a) Customer Content or Customer Data, (b) use of the System in a manner not specified in relevant Documentation or in violation of this Agreement, or (c) the combination of the System with other programs, software, data, hardware or materials not provided by Provider. If Customer’s use of the System is enjoined by reason of an Infringement Claim, Provider’s sole obligation shall be to either (i) procure the right for Customer to continue using the System, or (ii) replace or modify the components of the System subject to the Infringement Claim with non-infringing components of substantially equivalent functionality, and if neither (i) nor (ii) are available on a commercially reasonable basis, Provider will refund any unearned, prepaid Fees, and this Agreement shall terminate without any further liability of Provider. The foregoing states the entire liability of Provider with respect to any Infringement Claim, and Customer hereby expressly waives any other liabilities.

11.2 **Customer Indemnification.** Except as to those matters for which Provider is obligated to indemnify Customer under Section 11.1, Customer shall indemnify, defend, and hold harmless Provider and its Affiliates and their directors, officers, employees and agents with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys’ fees, arising out of (i) Customer’s or Customer’s Authorized Users’ use of or reliance on the System or System Content; (ii) any violation by Customer of this Agreement; (iii) Customer Content; or (iv) any acts or omissions of Customer or Customer’s Representatives.

11.3 **Indemnification Claims.** A Party seeking indemnification hereunder (an “**Indemnified Party**”) shall give the Party from whom indemnification is sought (the “**Indemnifying Party**”): (a) reasonably prompt notice of the relevant claim; provided, however, that failure to provide such notice shall not relieve the Indemnifying Party from its liability or obligation hereunder

except to the extent of any material prejudice directly resulting from such failure; (b) reasonable cooperation, at the Indemnifying Party's expense, in the defense of such claim; and (c) the right to control the defense and settlement of any such claim, provided, however, that the Indemnifying Party shall not, without the prior written approval of the Indemnified Party, settle or dispose of any claims in a manner that affects the Indemnified Party's rights or interest. The Indemnified Party shall have the right to participate in the defense at its own expense.

12. LIMITATIONS OF LIABILITY.

12.1 **System Content.** Except for its obligations under Section 11.1, Provider and its Affiliates shall not be held liable for any use of any System Content contained or made available through the System. Provider will have no liability for any errors in such System Content. Provider provides all System Content on an "AS IS" basis. The System Content could contain inaccuracies, omissions or errors and is provided to all users for general informational purposes only. It does not constitute Professional Advice and should not be relied upon as such. Customer expressly agrees that use of the System or any System Content derived or obtained therefrom is at Customer's sole risk, and any misuse of System Content shall be Customer's sole responsibility. To the maximum extent permitted by law, Provider shall not be liable for any loss, liability or damage of any kind resulting in any way from (a) any errors in or omissions from the System or any System Content, (b) any Customer Content or Derivative Content, (c) the unavailability or interruption of the System, any features thereof or any System Content available therein, (d) Customer's use of the System, (e) use of or reliance on System Content, or (f) any delay or failure in performance of the System. Specifically, Provider is not responsible for any damages, losses or costs incurred as the result of lost profits or revenue, loss of use of the System, Customer Data or System Content, use of or reliance on System Content, loss of data, costs of recovering data, the costs of any substitute programs, claims by third parties, or other similar costs.

12.2 TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES OR ANY AUTHORIZED USER FOR CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES (INCLUDING PROCUREMENT OR SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.3 TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE LIABILITY OF PROVIDER OR ITS AFFILIATES FOR LOSS OR DAMAGE RELATED TO THIS AGREEMENT OR THE SYSTEM OR SYSTEM CONTENT, UNDER ANY THEORY OF LIABILITY, EXCEED THE AMOUNT PAID BY CUSTOMER, IF ANY, TO PROVIDER UNDER THIS AGREEMENT DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING SUCH LOSS OR DAMAGE.

12.4 THE LIMITATIONS IN SECTIONS 12.2 AND 12.3 WILL NOT APPLY WITH RESPECT TO (a) A BREACH BY CUSTOMER OF SECTION 3.1 OR 3.2, (b) DAMAGES FOR WHICH PROVIDER HAS AN OBLIGATION TO INDEMNIFY CUSTOMER UNDER SECTION 11.1, AND (c) DAMAGES FOR WHICH CUSTOMER HAS AN OBLIGATION TO INDEMNIFY PROVIDER UNDER SECTION 11.2. The provisions of this Agreement allocate the risks between Customer and Provider. The Fees reflect this allocation of risk and the limitations of liability herein.

12.5 **Force Majeure.** Customer acknowledges that the Internet is not owned or controlled by any single entity, that the success of transmissions using the Internet is in part dependent on servers and telecommunications facilities outside of Provider's control, and that transmission of data across the public portions of the Internet is inherently insecure and is subject to interception or loss for reasons beyond Provider's control. In no event shall Provider be liable for missing, garbled or misdirected communications over the Internet or for Internet downtime or interruptions, System speed or slow down, or for the inability to access the System over the Internet. Neither Party shall be responsible for delays or failures in performance resulting from acts or circumstances beyond the control of such Party, including without limitation acts of God, strikes or other labor disputes, riots, acts of war, malfunction of portions of the Internet or another third party network, governmental regulations promulgated after the effective date of this Agreement, communication line failures, power failures, equipment failures, fires or other disasters, and acts of third parties, including hackers (each a "**Force Majeure Event**"); provided that such Party uses commercially reasonable efforts to, as soon as reasonably practicable, mitigate and correct such failure or delay in performance.

13. MISCELLANEOUS.

13.1 **Severability.** Should any term or provision of this Agreement be finally determined by a court of competent jurisdiction to be void, invalid, unenforceable or contrary to law or equity, the offending term or provision shall be construed (a) to have been modified and limited (or if strictly necessary, deleted) only to the extent required to conform to the requirements of law, and (b) to give effect to the intent of the Parties (including, without limitation, with respect to the economic effect of this Agreement), and the remainder of this Agreement (or, as the case may be, the application of such provisions to other circumstances) shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

13.2 Disputes. PLEASE READ THE FOLLOWING PARAGRAPH CAREFULLY BECAUSE IT REQUIRES CUSTOMER TO ARBITRATE DISPUTES WITH PROVIDER AND IT LIMITS THE MANNER IN WHICH CUSTOMER CAN SEEK RELIEF. Customer agrees that any claim, cause of action and dispute arising out of or related to this Agreement or the System, System Content or Customer Content (“**Claim**”), will be resolved by binding arbitration, rather than in court, except that Customer may assert a Claim in small claims court if such claim qualifies, and neither Party is required to arbitrate any Claim for injunctive relief for the alleged unlawful use of its intellectual property. ARBITRATION PREVENTS CUSTOMER FROM SUING IN COURT OR FROM HAVING A JURY TRIAL. Customer and Provider agree that any arbitration will occur in Houston, TX USA and that arbitration will be conducted confidentially by a single arbitrator in accordance with the commercial arbitration rules of the American Arbitration Association. The Federal Arbitration Act and federal arbitration law apply to this Agreement. Customer and Provider also agree that the state or federal courts in Harris County, Texas have exclusive jurisdiction over any appeals of an arbitration award and over any suit between the parties not subject to arbitration. Customer and Provider each waive any objection based on lack of personal jurisdiction, place of residence, improper venue or forum non conveniens in any such action. Disputes will be arbitrated only on an individual basis and will not be consolidated with any other proceedings that involve any claims or controversy of another party, including any class actions; provided, however, if for any reason any court or arbitrator holds that this restriction is unconscionable or unenforceable, then the agreement to arbitrate doesn’t apply and the dispute must be brought in a court of competent jurisdiction in Houston, TX USA. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded.

13.3 Modification and Waiver. Except as expressly provided herein, no other modification, amendment, supplement, or other change to this Agreement will be effective unless set forth in writing and signed by duly authorized representatives of Provider and Customer. No waivers under this Agreement will be effective unless expressly set forth in writing and signed by a duly authorized representative of the Party against whom enforcement thereof is sought. The failure of either Party to insist upon strict performance of any provision of this Agreement, or to exercise any right provided for herein, shall not be deemed to be a waiver of such provision or right with respect to subsequent claims (unless expressly so stated in a valid amendment or waiver), and no waiver of any provision or right shall affect the right of the waiving Party to enforce any other provision or right herein.

13.4 Assignment. No right or obligation of Customer under this Agreement may be assigned, delegated or otherwise transferred, whether by agreement, operation of law or otherwise, without the express prior written consent of Provider, and any attempt to assign, delegate or otherwise transfer any of Customer’s rights or obligations hereunder, without such consent, shall be void. Provider may assign, delegate or transfer its rights and obligations to another party that has the appropriate means for fulfilling such rights or obligations without prior written notice to or consent of Customer. Subject to the foregoing, this Agreement shall bind each Party and its permitted successors and assigns.

13.5 Notices. Any notice or communication permitted or required to be made by a Party hereunder shall be in writing and shall be delivered in person or by courier, sent by facsimile, transmitted via e-mail, or mailed by certified or registered mail, postage prepaid, return receipt requested, and addressed to the other Party using the contact information set forth in the Order Form. Provider may provide notice to Customer via the System or in writing using the methods set forth in this Section using the contact information that Customer supplied upon enrollment in the System. Either Party may change its contact information by notice given in accordance with this Section 13.5. All notices shall be effective upon receipt.

13.6 Insurance. Provider, at its own cost, shall procure, maintain, and keep in force and effect commercial general liability insurance to cover claims (including, but not limited to, claims brought by its employees or Subcontractors) that may arise out of or result from its operations and performance under this Agreement. The limits of such liability insurance shall be no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury and property damage. In addition to the foregoing, Provider shall also maintain a professional errors and omissions insurance policy with a minimum limit of \$1,000,000 per occurrence. Provider shall, upon request by Customer, provide certificates of insurance to document the existence of such policies.

13.7 U.S. Government Licensing. If Customer is directly or indirectly acquiring the Solution on behalf of the U.S. Government, the software object code and source code that is part of the Solution 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 the terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable, developed at private expense and containing confidential information and Trade Secrets of Provider and its licenses, and is subject to “Restricted Rights” as the term is defined in the U.S. Federal Acquisition Regulations. Customer agrees, consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through §227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items; and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished rights are reserved under the copyright laws of the United States.

13.8 Export Compliance. Each Party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the System and System Content. Without limiting the foregoing, (a) Customer

shall not permit Authorized Users to access or use System or System Content in violation of any U.S. export embargo, prohibition or restriction; and (b) Customer shall ensure that Customer's use of the System complies with all applicable export regulations and the laws and regulations of any foreign jurisdiction from which Customer access the System.

13.9 **Construction.** The captions and section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement. The terms "include" and "including" are not limiting.

13.10 **Relationship of Parties.** Provider and Customer are independent contracting parties. This Agreement shall not constitute the Parties as principal and agent, partners, joint venturers, or employer and employee.

13.11 **Third Party Beneficiaries.** With the exception of the indemnified parties specified in Section 11, which shall be considered third party beneficiaries of this Agreement with respect to such indemnification obligations, the Parties do not intend, nor shall any clause be interpreted, to create under this Agreement any obligations of either Party in favor of, or benefits to, or rights in, any third party.

13.12 **Governing Law; Attorneys' Fees.** This Agreement, its interpretation, performance and enforcement, any and all disputes related in any way to it, and all other matters related in any way to it, shall be governed by the laws of the State of Texas, without giving effect to any conflict of law principles or choice of law principles. In any action between the parties seeking enforcement of any of the provisions of this Agreement, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorneys' fees.