

Master Services Agreement

1. KEY DEFINITIONS

“Agreement” or **“MSA”** means this Master Services Agreement including any Ordering Documents(s), Statement(s) of Work and such other documents, attachments or exhibits that the parties’ authorized representatives mutually agree to in writing.

“Client Data” means all data, including personally identifiable information (“PII”) relating to Client’s Administrators and Learners that is entered by or on behalf of Client, Client’s Administrators or Learners, or that is generated as output by the Subscription Services, including class schedules, class completion, testing, and performance data.

“Client Content” means materials provided or posted by Client or Client Administrators on and through the Subscription Services, including text, images, graphics, audio and sound recordings, and videos and modifications, enhancements, or new versions thereof.

“Company Content” means materials provided or posted by Company and purchased or licensed by Client in connection with the Subscription Services, including training courses, tests, assessments, surveys, text, images, graphics, audio and sound recordings, videos and modifications, and enhancements or new versions thereof.

“Intellectual Property” means any and all intellectual property rights, recognized in any country or jurisdiction in the world, now or hereafter existing, and whether or not registered, perfected, filed or recorded, including without limitation inventions, technology, patent rights (including patent applications and disclosures), copyrights, trade secrets, trademarks, service marks, trade dress, rights of publicity and privacy and other similar rights.

“Learners” means the end-users of the LMS including any employees, contractors, students, learners, or trainees of Client who have registered for classes, training, or educational content through Client.

“LMS” means Company’s proprietary learning management system and other software access provided in connection with Subscription Services, including the Documentation, modifications, enhancements and new versions thereof.

“Ordering Document” means any document(s), regardless of actual name, executed by the parties from time to time, which incorporates by reference the terms of this Agreement and describes order-specific information such as description of Subscription Services and/or Professional Services ordered, Subscription Metrics, fees, and other business terms.

“Professional Services” means consulting, implementation, training or other professional services to be performed by the Company described in the applicable Statement(s) of Work or other Ordering Document(s) as mutually agreed to by the parties in writing.

“Site” means the web interface at a URL designated by Company and through which Client may access and use the Subscription Services.

“Statement of Work” or **“SOW”** means the document(s) executed by the parties from time to time, which incorporates by reference the terms of this Agreement and is used in lieu of an Ordering Document to describe a set of work, timeline, and cost estimate for Professional Services.

“Subscription Metrics” means each of the per-unit metrics specified in the Ordering Documents to describe the scope of Client’s right to use each of the Subscription Services, such as the maximum number of Administrators, restricted Administrators, Content type, and the like.

“Subscription Services” means collectively the LMS, any Company Content accessed through the Site, and any services provided in connection therewith.

“Administrators” means persons who have been authorized by Client to access and administer the Subscription Services to the Learners. Only current employees and independent contractors of Client are eligible to be Administrators, and an individual can be both an Administrator and a Learner, as applicable.

2. USE RIGHTS

2.1 Grant of Use. Subject to the terms of the Agreement, Company grants to Client the right to access and use the LMS and any Company Content described in the Ordering Document and purchased by Client, solely for its internal business purposes and solely in connection with the training and education of Learners.

2.2 Authorized Administrators. Client shall provide Company with the required registration data for all Administrators. The Administrators will then be responsible for onboarding the Learners, unless the applicable Ordering Document indicates otherwise. Client agrees not to activate and deactivate Administrators or Learners repeatedly as a method of keeping the number of Administrators and/or Learners within range of the Subscription Metrics stated in the Ordering Document. Client shall be responsible for all use of the Subscription Services by its Administrators and Learners and will promptly deactivate any Administrator or Learner whose engagement with Client is terminated.

2.3 Acceptable Use. Client and all Administrators and Learners shall use the Subscription Services exclusively for authorized and legal purposes, consistent with all applicable laws and regulations. Client agrees and shall ensure that Administrators (and, to the extent applicable, Learners) agree not to post or upload any content or data,

including Client Content, which (i) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (ii) is obscene, pornographic or indecent, or constitutes hate speech or encourages, sanctions or perpetuates discrimination, denigration, harm, enmity or violence against any person or group, including due to sexual orientation, gender identity, religious belief, disability, race or ethnicity; (iii) contains computer viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (iv) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; or (v) otherwise violates any applicable law or poses a threat of liability to Company. Client further agrees and shall ensure that all Administrators and Learners agree not to interfere or disrupt networks connected to the Subscription Services, not to interfere with another entity's use of similar services and to comply with all regulations, policies and procedures of networks connected to the Subscription Services. Company may remove any violating content, including Client Content, posted on the Subscription Services or transmitted through the Subscription Services without notice. Company may suspend or terminate any Administrator's or Learner's access to the Subscription Services in the event that Company reasonably determines that such Administrator or Learner has violated the terms and conditions of this Agreement or otherwise poses a threat to the security of the Subscription Service or may cause liability for Company.

2.4 Restrictions. Other than providing access to Learners as permitted herein, Client shall not itself, or through any affiliate, employee, contractor, agent or other third party (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Subscription Services, the Site or access thereto; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the LMS, in whole or in part, for competitive purposes or otherwise; (iii) allow access to provide, divulge or make available the Site or the Company Content to any user other than those who have authorization to access; (iv) write or develop any derivative works based upon the LMS or Company Content; or modify, adapt, translate or otherwise make any changes to the LMS or any Company Content or any part thereof; (vi) use the Subscription Services to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vii) disclose or publish, without Company's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Subscription Services; or (viii) remove from any Company Content or other materials owned by Company any identification, patent, copyright, trademark or other notices.

2.5 Learners. To the extent a Learner is not an employee of Client (a "Third Party Learner"), Client shall require all such Third Party Learners to execute an agreement between the Learner and Client that (i) is in accordance with the terms herein, (ii) provides for substantially the same protections for the Subscription Services and use of the Subscription Services as set forth in this Agreement, and (iii) provides the consent of such Third Party Learner to Company's access, processing, transferring, and use of such Third Party Learner's PII. Client shall be responsible for all use of the LMS and Content by its Learners. Learners shall not have the right to use the Subscription Service for any

purpose other than for registering for and accessing educational and training services provided by Client to Learners.

3. SUBSCRIPTION SERVICES

3.1 Environment. The Subscription Services will be hosted on server(s) that are maintained by Company or its designated third party and which may be located inside or outside of the United States. Administrator access to the Subscription Services is provided through the Site. Client is solely responsible for obtaining and maintaining, at its own expense, all equipment needed to access the Site, including but not limited to Internet access and telecommunications infrastructure network with adequate bandwidth.

3.2 Availability. Company shall use commercially reasonable efforts to make the Subscription Services available 24x7, except for scheduled downtime events, emergency downtime events, or service provider failures or delays. Company will use commercially reasonable efforts to perform scheduled downtime events outside of normal business hours and to provide advance notice of such scheduled downtime. Client acknowledges that the Subscription Services may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications; Company is not responsible for any delays, delivery failures, or other damage resulting from such problems or other events outside of its control.

3.3 Company Content. Company Content purchased, if any, shall be provided by Company to Client via the LMS. Client is responsible for selecting which Content will be available to Learners. Company continuously reviews and updates Content based on an ongoing needs analysis. Company reserves the right to add, revise, or withdraw from its Content any item or part of an item in its sole discretion at any time. Content may be used by Client and its Administrators and Learners only on the LMS, and Client shall not have the right to download, distribute, transfer, or create derivative works of the Content and shall not display or provide access to the Content other than to Administrators and Learners in accordance with this Agreement.

3.4 Passwords. Client is responsible for maintaining the confidentiality of all passwords and for ensuring that each password is used only by the authorized Administrator or Learner. Client is entirely responsible for any and all activities that occur under its account, including by its Administrators and Learners. Client shall immediately notify Company of any unauthorized use, or any other breach of security that becomes known to Client. Company shall have no liability for any loss or damage arising from Client's failure to comply with these requirements.

3.5 Client Content. Client shall be solely responsible for the accuracy, quality, integrity, and legality of all Client Content uploaded in the LMS by Client or its Administrators. Client shall own, subject to the provisions of section 7, or shall obtain all proprietary rights necessary, including copyrights, patents, and trade secrets, in and to any Client Content.

3.7 Changes. Company reserves the right to add, modify or remove features or functionality to the LMS or to modify, update or remove Company Content from the Subscription Services (subject to any purchase of access to Company Content by Client). Company regularly updates the Subscription Services, meaning that such Subscription Services are continually evolving. Some of these changes will occur automatically, while others may require Client to schedule and implement the changes.

4. PROFESSIONAL SERVICES

4.1 Statements of Work; Change Orders. Company will perform Professional Services according to the applicable Statement of Work or other Ordering Document as the parties may agree to in writing from time to time. Either party may propose a change order to add to, reduce, or change the Professional Services ordered. Each change order shall specify the change(s) to the Professional Services, the time to perform the Professional Services, and the fees owed to Company, due to the change. Once executed by both parties, a change order shall become a part of the Statement of Work or other Ordering Document.

4.2 Cooperation. Client shall provide Company with good-faith cooperation and access to such information, facilities, personnel, and equipment as Company may reasonably require in order to provide the Professional Services. Client acknowledges that Company's performance is dependent upon the timely and effective completion of Client's responsibilities hereunder and Client's timely decisions and approvals in connection with the Professional Services. Company shall be entitled to rely on all such decisions and approvals.

5. FINANCIAL TERMS.

5.1 Fees and Payment Terms; Taxes. Fees and payment terms are specified in the applicable Ordering Document. All payments made hereunder shall be in US Dollars. Company may, after the first twelve (12) months of the initial term, and not more than once in a twelve (12) month period, modify the fees for Subscription Services upon sixty (60) days written notice. Unless otherwise specified in the Ordering Document, payment of all fees is due thirty (30) days after the invoice date. Interest accrues on past due balances at the lesser of 1½% per month or the highest rate allowed by law. Failure to make timely payments shall be a material breach of the Agreement and Company will be entitled to suspend access and use of the Subscription Services or performance of any other services hereunder upon fifteen (15) days written notice to Client and/or to modify the payment terms, and to request full payment before any additional performance is rendered by Company. Unless expressly provided otherwise, prices do not include taxes. Client agrees to pay any federal, state or local sales, use, personal property, excise taxes or other taxes arising out of this Agreement.

5.2 Subscription Metrics. Client understands and agrees that (i) all fees are based on the Subscription Metrics purchased and that (ii) if Client exceeds such Subscription Metrics, Company shall be entitled to charge Client, and Client shall pay, for such excess usage at Company's then-current rates.

5.3 Professional Services. Professional Services may be provided on a time and materials (“*T&M*”) basis or on a fixed fee basis as indicated in a duly executed Statement of Work or other Ordering Document. On a T&M engagement, if an estimated total amount is stated in the Statement of Work or Ordering Document, that amount is solely a good faith estimate for Client’s budgeting and Company’s resource scheduling purposes and not a guarantee that the work will be completed for that amount. On a fixed fee engagement, fees for the Professional Services shall not exceed the fixed fee unless otherwise agreed in a change order executed by the parties.

5.4 No Contingencies. Client agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Company regarding future functionality or features.

6. CONFIDENTIALITY; CLIENT DATA.

6.1 Confidential Information. Each party hereby agrees that it will not use or disclose any Confidential Information received from the other party other than as expressly permitted under the terms of this Agreement or as expressly authorized in writing by the other party. “**Confidential Information**” means any and all information disclosed by either party to the other which is marked “confidential” or “proprietary” or which should be reasonably understood by each party to be confidential or proprietary, including, but not limited to, the terms and conditions (but not the existence) of this Agreement, all trade secrets, Intellectual Property as well as results of testing and benchmarking of the Subscription Services. Each party will protect the other party’s Confidential Information from unauthorized dissemination and use the same degree of care that each such party uses to protect its own confidential information, but in no event less than a reasonable amount of care. Information shall not be considered Confidential Information to the extent, but only to the extent, that the receiving party can establish that such information (i) is or becomes generally known or available to the public through no fault of the receiving party; (ii) was lawfully in the receiving party’s possession before receipt from the disclosing party without a duty of confidentiality; (iii) is lawfully obtained from a third party who has the right to make such disclosure on a non-confidential basis; or (iv) has been independently developed by one party without reference to any Confidential Information of the other.

6.2 Compelled Disclosure. A party (“Disclosing Party”) may disclose Confidential Information of the other party if it is compelled by law to do so, provided the Disclosing Party gives the other party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party’s cost, if the other party wishes to contest the disclosure.

6.3 Client Data. Client shall not upload to the LMS or otherwise provide Company or its suppliers access to any Protected Health Information, as defined in 45 C.F.R. § 160.103, or other PII subject to regulatory requirements (including information subject to the Federal Educational Rights and Privacy Act). As between Company and Client, Client shall retain ownership of all Client Data. Client shall have obtained all rights, consents, and permissions and made all such disclosures as may be required to provide Client Data

to Company for use in the Subscription Services. Client is solely responsible for verifying the accuracy of all Client Data. Company shall use Client Data solely for the purposes of providing the Subscription Services to Client and as set forth herein and in the Company's Privacy Policy.

7. OWNERSHIP.

7.1 Reservation of Rights. All rights in and to the LMS and Company Content not expressly granted in this Agreement are reserved by Company and its licensors.

7.2 Subscription Services; Company Content. Company and its licensors shall retain sole and exclusive ownership of, and all rights, title, and interest in, the Subscription Services and Site, including without limitation (a) all Intellectual Property embodied or associated therein, and (b) all derivative works, improvements and copies thereof. Client shall not obtain any right, title or interest in or to the LMS or Company Content other than the licenses granted herein.

7.3 Professional Services. Company shall retain all rights, title and interest in and to any and all Intellectual Property used or in any manner employed by Company in the provision of Professional Services. Unless otherwise set forth in the Statement of Work, all Intellectual Property developed by Company in performance of the Professional Services, including any customizations, enhancements or improvements to the Subscription Services, shall be the sole and exclusive property of Company, exclusive of any Client Content or Confidential Information of Client.

7.5 Client Content. Client shall have the right to upload Client Content for use in the LMS and access by Learners. Client hereby represents that it owns the Client Content or has sufficient rights and/or licenses to the Client Content to use the Client Content and grant Company the licenses granted herein, and that the Client Content does not and shall not infringe or violate the Intellectual Property Rights of any third party. Company reserves the right to remove or block access to any Client Content based on receipt of notice from a third party or if Company reasonably believes such Client Content violates any provision of this Agreement. Client hereby grants Company such rights and licenses as may be necessary for Company to process, use, copy, display, maintain and transmit Client Content for the purpose of providing and supporting the Subscription Services.

7.6 Client Mark Permission. During the term of the Agreement, Client hereby grants to Company a non-exclusive, revocable, worldwide, royalty-free, fully paid-up license to use Client's name and logo (collectively referred to as "Client Marks") in connection with the provision of the Subscription Services and the marketing of products and services provided by Company on Company's website. Any other uses shall be pre-approved by Client in a signed writing. Client represents and warrants that it owns all right, title and interest in, to and under the Client Marks, and that such Client Marks do not infringe or otherwise violate any third-party rights. Client agrees to notify Company promptly of any and all infringements and/or potential infringements of the Client Marks which come to its

attention and to give reasonable assistance in preventing and stopping such infringements.

8. WARRANTIES, DISCLAIMERS AND LIMITATION OF LIABILITY.

8.1 Authority. Each party represents and warrants to the other party that it has the legal power and authority to enter into this Agreement.

8.2 LMS. Company warrants that the LMS will operate in all material respects in conformity with the functional specifications described in the documentation. "**Documentation**" means the LMS instructions, release notes and on-line help files in the form generally made available by Company to its customers, as updated from time to time by Company. If the LMS does not perform as warranted and there is a material failure of the LMS to conform to its functional specifications described in the Documentation that is reported by the Client to, and replicable by, Company ("**Errors**"), Company shall use commercially reasonable efforts to correct Errors in accordance with Company's standard support policies as may be adopted by the Company from time to time.

8.3 Professional Services. Company warrants that the Professional Services will be performed in a workman like manner. As Client's exclusive remedy for any claim under this warranty, Client shall notify Company in writing of its claim within thirty (30) days of Company's completion of the applicable services and, provided that such claim is reasonably determined by Company to be Company's responsibility, Company shall re-perform the applicable service. Company's entire liability and Client's exclusive remedy for any breach of the warranty set forth in this section shall be the re-performance of the applicable service.

8.4 EXCEPT AS EXPRESSLY STATED IN THIS SECTION 8, THE LMS, COMPANY CONTENT AND PROFESSIONAL SERVICES ARE PROVIDED ON AN 'AS IS AS AVAILABLE' BASIS. COMPANY, ITS LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL WARRANTIES, EXPRESSED OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ANY WARRANTY THAT ANY SOFTWARE, DATABASE, CONTENT, DELIVERABLES OR PROFESSIONAL SERVICES ARE ERROR-FREE, ACCURATE OR RELIABLE OR WILL OPERATE WITHOUT INTERRUPTION OR THAT ALL ERRORS WILL BE CORRECTED OR WILL COMPLY WITH ANY LAW, RULE OR REGULATION, (ii) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AND (iii) ANY AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NO ADVICE, STATEMENT OR INFORMATION GIVEN BY COMPANY, ITS AFFILIATES, CONTRACTORS, OR EMPLOYEES SHALL CREATE OR CHANGE ANY WARRANTY PROVIDED HEREIN. CLIENT EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE LMS AND COMPANY CONTENT IS NOT DESIGNED OR INTENDED TO MEET ALL OF ITS OR ITS ADMINISTRATORS' OR LEARNERS' TRAINING AND EDUCATIONAL NEEDS OR REQUIREMENTS, INCLUDING

TRAINING AND EDUCATION THAT IS REQUIRED UNDER APPLICABLE LAWS, PROFESSIONAL LICENSING REQUIREMENTS OR OTHERWISE. CLIENT ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE SERVICES AND CONTENT PROVIDED HEREUNDER TO ACHIEVE ITS INTENDED RESULTS. CLIENT SHALL BE SOLELY RESPONSIBLE FOR ENSURING THE ACCURACY OF CLIENT CONTENT AND SHALL BE SOLELY LIABLE FOR ALL USE OF THE SUBSCRIPTION SERVICES AND CLIENT CONTENT BY ITS ADMINISTRATORS AND LEARNERS.

CLIENT ACKNOWLEDGES THAT USE OF OR CONNECTION TO THE INTERNET PROVIDES THE OPPORTUNITY FOR UNAUTHORIZED THIRD PARTIES TO CIRCUMVENT SECURITY PRECAUTIONS AND ILLEGALLY GAIN ACCESS TO THE SERVICES AND ITS DATA. ACCORDINGLY, COMPANY CANNOT AND DOES NOT GUARANTEE THE PRIVACY, SECURITY OR AUTHENTICITY OF ANY INFORMATION SO TRANSMITTED OVER OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET.

TO THE FULLEST EXTENT PERMITTED BY LAW, COMPANY'S TOTAL LIABILITY (INCLUDING ATTORNEYS' FEES AWARDED UNDER THIS AGREEMENT) TO CLIENT, ADMINISTRATORS, AND LEARNERS FOR ANY CLAIM BY CLIENT OR ANY THIRD PARTIES UNDER THIS AGREEMENT, WILL BE LIMITED TO THE FEES PAID UNDER THE APPLICABLE ORDERING DOCUMENT RELATING TO THE SUBJECT MATTER OF THE CLAIM FOR THE PRIOR TWELVE (12) MONTHS. IN NO EVENT WILL COMPANY, ITS LICENSORS AND SUPPLIERS BE LIABLE TO CLIENT, ADMINISTRATORS, LEARNERS, OR OTHER THIRD PARTIES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY PUNITIVE, TREBLE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF BUSINESS, REVENUE, PROFITS, STAFF TIME, GOODWILL, USE, DATA, OR OTHER ECONOMIC ADVANTAGE, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NO CLAIM ARISING OUT OF THE AGREEMENT, REGARDLESS OF FORM, MAY BE BROUGHT MORE THAN THE SHORTER OF ONE YEAR OR THE PERIOD ALLOWED BY LAW AFTER THE CAUSE OF ACTION HAS OCCURRED.

THIS SECTION 8 SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDY.

9. INDEMNIFICATION.

9.1 Client Indemnification. Client shall indemnify and hold Company, its affiliates, suppliers, service providers, employees and officers (a "**Company Indemnified Party**") harmless from and against all liability, claims, damages, fines, losses, expenses (including reasonable attorney's fees and court costs, and the cost of enforcing this indemnity) suffered or incurred by Company or any Company Indemnified Party arising out of, or in connection with (a) any material breach by Client or any Administrator or Learner of any of the terms of this Agreement; or (b) any use or reliance by Client or any

Administrator or Learner of the Subscription Services or any Customer Content, including all third-party claims, causes of action, suits, and legal proceedings asserted against Company or a Company Indemnified Party.

9.2 Company Indemnification. Company shall indemnify and hold harmless Client and its principals, officers, directors, agents, and employees (the “**Client Indemnified Parties**”), and at Company’s option, either defend Client Indemnified Parties or pay their attorney’s fees and court costs, from any loss, cost, damage, or expense incurred by Client that is finally awarded by a court of law to any third party as a result of a claim alleging that the Subscription Services or any portion thereof infringe or misappropriate a U.S. patent, U.S. copyright, U.S. trademark or U.S. trade secret of a third party, solely provided such alleged infringement or misappropriation does not arise from: (i) a modification of the Subscription Services, or any portion thereof, as delivered to Client, (ii) the combination of the Subscription Services with any other process, hardware, software, data, or functionality, (iii) any data or content communicated using such Subscription Services (iv) any use of the Subscription Services by Client in a manner inconsistent with the documentation or instructions provided by Company or otherwise in breach of this Agreement; or (v) any Client Content.

9.3 Indemnification Procedure. The indemnifications made hereunder are solely provided upon the following conditions: (i) the indemnifying party controls any settlement or any suit or claim indemnified hereunder (ii) the indemnified party’s prior written consent, which shall not be unreasonably withheld or delayed, is obtained prior to any settlement by the indemnifying party that affects the indemnified party’s rights and obligations; (iii) the indemnifying party is promptly informed of any third party claim indemnified hereunder provided that the indemnifying party shall be released from its indemnification obligations only to the extent materially prejudiced by any failure to promptly inform the indemnifying party; and, (iv) in the case of Client, Client ceases any alleged infringing activity upon actual or constructive notice of any claim or allegation of infringement.

10. TERM AND TERMINATION.

10.1 Agreement Term. The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect for contract term. The term shall automatically renew for the same length as the existing term, unless either party terminates this Agreement on not less than thirty (30) days written notice prior to a renewal term or otherwise terminated earlier as provided hereunder.

10.2 Subscription Services Term. The initial term of Subscription Services commences on the date specified in, and continues for the term set forth in, the Ordering Documents. Following the end of the initial term, Subscription Services shall automatically renew for the same length as the initial term unless either party gives written notice at least thirty (30) days prior to the end of the initial term, or any renewal term, of its intention to terminate any of the Subscription Services. The pricing for the first twelve (12) months of any renewal term shall be provided by Company in writing no less than sixty (60) days

prior to the end of the initial term or any renewal term. The initial term and renewal term(s) are collectively referred to as the “**Subscription Services Term**”.

10.3 Termination. Either party may terminate the Agreement including all Ordering Documents executed thereunder immediately upon written notice (i) in the event that the other party commits a non-remediable material breach of the Agreement, or if the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching party within thirty (30) days of being notified in writing of such breach; or (ii) in the event of commencement of bankruptcy, receivership, insolvency, reorganization, or other similar proceedings by or against the other party under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, if such proceedings have not been dismissed or discharged within thirty (30) calendar days after they are instituted; or the insolvency or making of an assignment for the benefit of creditors or the admittance by either party of any involuntary debts as they mature or the institution of any reorganization arrangement or other readjustment of debt plan of either party not involving the United States Bankruptcy Code.

10.4 Partial Termination. Where a party has rights to terminate, the non-breaching party may at its discretion either terminate the entire Agreement or the applicable Ordering Documents. Ordering Documents that are not terminated shall continue in full force and effect under the terms of this Agreement.

10.5 Effect of Termination. Following termination of this Agreement (for whatever reason provided for under the Agreement), Client shall certify that Client has returned or destroyed all copies of the Company Content, Confidential Information and Intellectual Property of Company and all materials or documents relating to the Subscription Services in any format and residing on any media. Client acknowledges that its rights to use the same shall automatically terminate at such time. Client shall be responsible for downloading their Client Data and Client Content prior to the termination or expiration date, and Company has no obligation to retain Client Data or Client Content after the three months following the expiration or termination of Subscription Services and may thereafter delete the data.

Termination for any reason shall not excuse Client’s obligation to pay in full any and all amounts due or that become due through such termination or that arise under Section 10.6, nor shall termination result in a refund of fees paid, except as expressly provided otherwise in this Agreement.

10.6 Survival. The following provisions will survive any termination or expiration of the Agreement or Ordering Documents: Sections 1 , 5, 6, 7, 8, 9, 10 and 11.

11. GENERAL PROVISIONS.

11.1 Suspension. Company will be entitled to suspend any or all Subscription Services and Professional Services upon thirty (30) days written notice to Client in the event Client

is in breach of this Agreement. Company may impose an additional charge to reinstate service following such suspension.

11.2 Force Majeure. Neither party shall incur any liability to the other party on account of any loss, claim, damage or liability to the extent resulting from any delay or failure to perform all or any part of this Agreement (except for payment obligations), if and to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without any negligence on the part of the party seeking protection under this subsection, such as without limitation, acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire or explosions. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

11.3 Subcontractors. Company may subcontract or delegate Subscription Services and/or Professional Services to any third party without Client's prior written consent, provided that Company shall remain responsible to Client for any services for which it subcontracts or delegates.

11.4 Assignment. Company may assign this Agreement and any or all of its rights and obligations herein without Client's approval. Client may not assign or transfer this Agreement without Company's prior written consent.

11.5 Non-solicitation. During the term of this Agreement and for a period of one (1) year following its termination, neither party will solicit for employment directly or through other parties, without the other party's written permission, any individual employed by the other party, provided however that the solicitation or hiring of individuals responding to general public marketing and recruiting advertisements and events shall not be a violation of this provision; only active, targeted solicitation is prohibited.

11.6 Compliance. Company reserves the right to utilize data stored by Client in the LMS to verify compliance with the terms of this Agreement. Company may monitor the usage, performance, and operation of the Subscription Services using electronic, remote, and other means and without notice to Client.

11.7 Notices. Any notice required or permitted to be sent under this Agreement (except for invoices and notices related to payment of fees and price increases) shall be delivered by hand, by overnight courier, or by registered mail, return receipt requested, to the address of the parties first set forth in the Agreement Signature Page or to such other address of the parties designated in writing in accordance with this subsection.

11.8 Relationship. This Agreement is not intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor.

11.9 Invalidity. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

11.10 No Waiver. No waiver or failure by either party to exercise any option, right or privilege under the terms of this Agreement on any occasion or occasions will be construed to be a waiver of the same on any other occasion or of any other option, right or privilege. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of the Agreement or its rights or remedies at any time, shall not be construed and shall not be deemed to be a waiver of such party's rights under the Agreement and shall not in any way affect the validity of the whole or any part of the Agreement or prejudice such party's right to take subsequent action.

11.11 Entire Agreement. This Agreement, including Ordering Documents and other attachments incorporated by reference, constitutes the parties' entire agreement relating to its subject matter. It cancels and supersedes all prior or contemporaneous oral or written communications, agreements, proposals, conditions, representations, warranties, or other communication between the parties relating to its subject matter as well as any prior contractual agreements between the parties. No modification to the Agreement will be binding unless in writing and includes a signature by an authorized representative of each party. All pre-printed or standard terms of any of Client's purchase order or other business processing document shall have no effect.

11.12 No Third-Party Beneficiaries. This Agreement is for the benefit of the parties and their successors and permitted assigns and does not confer any rights or benefits on any third party, including any employee of a party, any client of a party, or any employee of a client of a party.

11.13 Governing Law and Venue. The Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without giving effect to its principles of conflict of laws. Any dispute arising from or relating to the Agreement shall be litigated in the state or federal courts located in Wake County, North Carolina, to whose exclusive jurisdiction the parties hereby consent.

11.14 Headings and Drafting. The headings in the Agreement shall not be used to construe or interpret the Agreement. The Agreement shall not be construed in favor of or against a party based on the author of the document.

11.15 Counterparts. The Agreement may be executed in one or more counterparts, each of which shall constitute an enforceable original of the Agreement, and the parties agree that electronic signatures and/or pdf scanned copies of signatures shall be as effective and binding as original signatures.

11.16 Notice of U.S. Government Restricted Rights. If the Client hereunder is the U.S. Government, or if the LMS is acquired hereunder on behalf of the U.S. Government

with U.S. Government federal funding, notice is hereby given that the LMS is commercial computer software and documentation developed exclusively at private expense and are furnished as follows: "U.S. GOVERNMENT RESTRICTED RIGHTS. Software delivered subject to the FAR 52.227-19. All use, duplication, and disclosure of the Software by or on behalf of the U.S. Government shall be subject to this Agreement and the restrictions contained in subsection (c) of FAR 52.227-19, Commercial Computer Software – Restricted Rights (June 1987)."